

Irrigation and M&I
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 Rev. SCCAO Draft 10/17-2004
 Rev. SCCAO Draft 03/19-2004
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 Rev. RO Draft 02/06-2002
 SCCAO Draft 11/16-2000
 Contract No.
 14-06-200-8565A-LTR1

UNITED STATES
 DEPARTMENT OF THE INTERIOR
 BUREAU OF RECLAMATION
 Central Valley Project, California

LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
 AND TRI-VALLEY WATER DISTRICT
 PROVIDING FOR PROJECT WATER SERVICE

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Exhibit A - Map of Contractor's Service Area

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1 UNITED STATES
2 DEPARTMENT OF THE INTERIOR
3 BUREAU OF RECLAMATION
4 Central Valley Project, California

5 LONG-TERM RENEWAL CONTRACT AMONG THE UNITED STATES,
6 THE DEPARTMENT OF WATER RESOURCES OF THE STATE OF CALIFORNIA,
7 AND TRI-VALLEY WATER DISTRICT
8 PROVIDING FOR PROJECT WATER SERVICE

9 THIS CONTRACT, made this _____ day of _____, 2005, in pursuance
10 generally of the Act of June 17, 1902 (32 Stat. 388), and acts amendatory or supplementary thereto,
11 including, but not limited to, the Acts of August 26, 1937 (50 Stat. 844), as amended and
12 supplemented, August 4, 1939 (53 Stat. 1187), as amended and supplemented, July 2, 1956 (70 Stat.
13 483), June 21, 1963 (77 Stat. 68), October 12, 1982 (96 Stat. 1263), October 27, 1986 (100 Stat. 3050),
14 as amended, and Title XXXIV of the Act of October 30, 1992 (106 Stat. 4706), all collectively
15 hereinafter referred to as Federal Reclamation law and pursuant to the California Central Valley
16 Project Act [Part 3, Division 6 (commencing at Section 11100) of the California Water Code] and the
17 California Water Resources Development Bond Act [Chapter 8, Part 6, Division 6 (commencing at
18 Section 12930) of the California Water Code,] and all acts of the California legislature amendatory
19 thereto or supplementary thereof, among THE UNITED STATES OF AMERICA, hereinafter referred
20 to as the United States, the DEPARTMENT OF WATER RESOURCES OF THE STATE OF
21 CALIFORNIA, hereinafter referred to as DWR, and TRI-VALLEY WATER DISTRICT, hereinafter
22 referred to as the Contractor, a public agency of the State of California, duly organized, existing, and
23 acting pursuant to the laws thereof;

24 WITNESSETH, That:

25 EXPLANATORY RECITALS

26 [1st] WHEREAS, the United States has constructed and is operating the Central Valley
27 Project (Project), California, for diversion, storage, carriage, distribution and beneficial use, for flood
28 control, irrigation, municipal, domestic, industrial, fish and wildlife mitigation, protection and
29 restoration, generation and distribution of electric energy, salinity control, navigation and other
30 beneficial uses, of waters of the Sacramento River, the American River, the Trinity River, and the San
31 Joaquin River and their tributaries; and

32 [2nd] WHEREAS, the United States constructed the Project facilities, which will be used in
33 part for the furnishing of water to the Contractor pursuant to the terms of this Contract; and

34 [2.2] WHEREAS, as provided herein, Project Water may be made available to the Contractor
35 from the Sacramento-San Joaquin Delta and/or the Friant Division and delivered to the Contractor
36 through appropriate federal, state and/or local facilities; and

37 [2.3] WHEREAS, DWR is engaged in the operation of the State Water Resources
38 Development System pursuant to the laws of the State of California involving the development,
39 transportation, and delivery of water supplies to public agencies throughout the State of California; and

40 [2.4] WHEREAS, the Cross Valley Canal, connecting the California Aqueduct and the
41 Friant-Kern Canal in Kern County, has been constructed by the Contractor and others at no cost to
42 either the United States or DWR; and

43 [2.5] WHEREAS, the Contractor has the right to use the Cross Valley Canal for conveyance
44 of the Project Water furnished hereunder; and

45 [3rd] WHEREAS, the rights to Project Water were acquired by the United States pursuant to
46 California law for operation of the Project; and

47 [4th] WHEREAS, the Contractor and the United States entered into
48 Contract No. 14-06-200-8565A, as amended, which established terms for the delivery to the Contractor
49 of Project Water via the Cross Valley Canal from November 5, 1976, through February 29, 1996; and

50 [5th] WHEREAS, the Contractor and the United States have pursuant to subsection
51 3404(c)(1) of the Central Valley Project Improvement Act (CVPIA), subsequently entered into interim
52 renewal contract(s) identified as Contract No(s). 14-06-200-8565A-IR1, -IR2, -IR3, -IR4, -IR5, -IR6,
53 -IR7, and -IR8, the current of which is hereinafter referred to as the Existing Contract, which provided
54 for the continued water service to the Contractor from March 1, 2004, through February 28, 2005; and

55 [6th] WHEREAS, Section 3404(c) of the CVPIA provides for long-term renewal of the
56 Existing Contract following completion of appropriate environmental documentation, including a
57 programmatic environmental impact statement (PEIS) pursuant to the National Environmental Policy
58 Act (NEPA) analyzing the direct and indirect impacts and benefits of implementing the CVPIA and the
59 potential renewal of all existing contracts for Project Water; and

60 [7th] WHEREAS, the United States has completed the PEIS and all other appropriate
61 environmental review necessary to provide for long-term renewal of the Existing Contract; and

62 [8th] WHEREAS, the Contractor has requested the long-term renewal of the Existing
63 Contract, pursuant to the terms of the Existing Contract, Federal Reclamation law, and the laws of the
64 State of California, for water service from the Project; and

65 [9th] WHEREAS, the United States has determined that the Contractor has fulfilled all of its
66 obligations under the Existing Contract; and

67 [10th] WHEREAS, the Contractor has demonstrated to the satisfaction of the Contracting
68 Officer that the Contractor has utilized the Project Water supplies available to it for reasonable and
69 beneficial use and/or has demonstrated projected future demand for water use such that the Contractor

70 has the capability and expects to utilize fully for reasonable and beneficial use the quantity of Project
71 Water to be made available to it pursuant to this Contract; and

72 [11th] WHEREAS, water obtained from the Project has been relied upon by urban and
73 agricultural areas within California for more than 50 years, and is considered by the Contractor as an
74 essential portion of its water supply; and

75 [12th] WHEREAS, the economies of regions within the Project, including the Contractor's,
76 depend upon the continued availability of water, including water service from the Project; and

77 [13th] WHEREAS, the Secretary intends through coordination, cooperation, and partnerships
78 to pursue measures to improve water supply, water quality, and reliability of the Project for all Project
79 purposes; and

80 [14th] WHEREAS, the mutual goals of the United States and the Contractor include: to
81 provide for reliable Project Water supplies; to control costs of those supplies; to achieve repayment of
82 the Project as required by law; to guard reasonably against Project Water shortages; to achieve a
83 reasonable balance among competing demands for use of Project Water; and to comply with all
84 applicable environmental statutes, all consistent with the legal obligations of the United States relative
85 to the Project; and

86 [15th] WHEREAS, the parties intend by this Contract to develop a more cooperative
87 relationship in order to achieve their mutual goals; and

88 [15.2] WHEREAS, the Contractor desires to contract with DWR for conveyance of Project
89 Water through the facilities of the State Water Project (SWP) as aforesaid under an arrangement
90 wherein the United States will furnish the necessary power for pumping such water through DWR's
91 Delta Pumping Plant and Dos Amigos Pumping Plant pursuant to the then-existing CVP Project use
92 power policy; and

93 [15.3] WHEREAS, DWR is willing to convey such water through State Facilities subject to
94 needs and obligations of the SWP and the availability of transportation capacity and payment of costs
95 as herein provided; and

96 [16th] WHEREAS, the United States, DWR, and the Contractor are willing to enter into this
97 Contract pursuant to Federal Reclamation law on the terms and conditions set forth below;

98 NOW, THEREFORE, in consideration of the mutual and dependent covenants herein
99 contained, it is hereby mutually agreed by the parties hereto as follows:

100 DEFINITIONS

101 1. When used herein unless otherwise distinctly expressed, or manifestly incompatible
102 with the intent of the parties as expressed in this Contract, the term:

103 (a) “Calendar Year” shall mean the period January 1 through December 31, both
104 dates inclusive;

105 (b) “Charges” shall mean the payments required by Federal Reclamation law in
106 addition to the Rates and Tiered Pricing Component specified in this Contract as determined annually
107 by the Contracting Officer pursuant to this Contract;

108 (c) “Condition of Shortage” shall mean a condition respecting the Project during
109 any Year such that the Contracting Officer is unable to deliver sufficient water to meet the Contract
110 Total;

111 (d) “Contracting Officer” shall mean the Secretary of the Interior’s duly authorized
112 representative acting pursuant to this Contract or applicable Federal Reclamation law or regulation;

113 (e) “Contract Total” shall mean the maximum amount of water to which the
114 Contractor is entitled under subdivision (a) of Article 3 of this Contract;

115 (f) "Contractor's Service Area" shall mean the area to which the Contractor is
116 permitted to provide Project Water under this Contract as described in Exhibit "A" attached hereto,
117 which may be modified from time to time in accordance with Article 35 of this Contract without
118 amendment of this Contract;

119 (f2) "Cross Valley Canal" shall mean the water conveyance and related works
120 constructed by the Contractor and others to deliver water from the State Facilities, which canal
121 currently is operated by KCWA;

122 (g) "CVPIA" shall mean the Central Valley Project Improvement Act, Title XXXIV
123 of the Act of October 30, 1992 (106 Stat. 4706);

124 (h) "Eligible Lands" shall mean all lands to which Irrigation Water may be
125 delivered in accordance with Section 204 of the Reclamation Reform Act of October 12, 1982 (96 Stat.
126 1263), as amended, hereinafter referred to as RRA;

127 (i) "Excess Lands" shall mean all lands in excess of the limitations contained in
128 Section 204 of the RRA, other than those lands exempt from acreage limitation under Federal
129 Reclamation law;

130 (j) "Full Cost Rate" shall mean an annual water rate as determined by the
131 Contracting Officer that shall amortize the expenditures for construction properly allocable to the
132 Project irrigation or M&I functions, as appropriate, of facilities in service including all O&M deficits
133 funded, less payments, over such periods as may be required under Federal Reclamation law, or
134 applicable contract provisions. Interest will accrue on both the construction expenditures and funded
135 O&M deficits from October 12, 1982, on costs outstanding at that date, or from the date incurred in the
136 case of costs arising subsequent to October 12, 1982, and shall be calculated in accordance with
137 subsections 202(3)(B) and (3)(C) of the RRA. The Full Cost Rate includes actual operation,

138 maintenance, and replacement costs consistent with Section 426.2 of the Rules and Regulations for the
139 RRA;

140 (k) “Ineligible Lands” shall mean all lands to which Irrigation Water may not be
141 delivered in accordance with Section 204 of the RRA;

142 (l) “Irrigation Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
143 delivery of Irrigation Water;

144 (m) “Irrigation Water” shall mean water made available from the Project that is used
145 primarily in the production of agricultural crops or livestock, including domestic use incidental thereto,
146 and watering of livestock;

147 (m2) “KCWA” shall mean the Kern County Water Agency;

148 (n) “Landholder” shall mean a party that directly or indirectly owns or leases
149 nonexempt land, as provided in 43 CFR 426.2;

150 (o) “Municipal and Industrial (M&I) Water” shall mean Project Water, other than
151 Irrigation Water, made available to the Contractor. M&I Water shall include water used for human use
152 and purposes such as the watering of landscaping or pasture for animals (e.g., horses) which are kept
153 for personal enjoyment or water delivered to land holdings operated in units of less than five acres
154 unless the Contractor establishes to the satisfaction of the Contracting Officer that the use of water
155 delivered to any such landholding is a use described in subdivision (m) of this Article;

156 (p) “M&I Full Cost Water Rate” shall mean the Full Cost Rate applicable to the
157 delivery of M&I Water;

158 (q) “Operation and Maintenance” or “O&M” shall mean normal and reasonable
159 care, control, operation, repair, replacement (other than capital replacement), and maintenance or
160 Project facilities;

161 (r) “Operating Non-Federal Entity” shall mean either the San Luis &
162 Delta-Mendota Water Authority or the Friant Water Authority, their successors or assigns, non-Federal
163 entities which have the obligation to operate and maintain all or a portion of the Project facilities
164 pursuant to agreements with the United States, and which may have funding obligations with respect
165 thereto;

166 (r2) “Operations Manual” shall mean the manual setting forth detailed operations
167 and management procedures prepared by DWR, the Contracting Officer and the Contractor;

168 (s) “Project” shall mean the Central Valley Project owned by the United States and
169 managed by the Department of the Interior, Bureau of Reclamation;

170 (t) “Project Contractors” shall mean all parties who have water service contracts for
171 Project Water from the Project with the United States pursuant to Federal Reclamation law;

172 (u) “Project Water” shall mean all water that is developed, diverted, stored, or
173 delivered by the Secretary in accordance with the statutes authorizing the Project and in accordance
174 with the terms and conditions of water rights acquired pursuant to California law;

175 (v) “Rates” shall mean the payments determined annually by the Contracting
176 Officer in accordance with the then-current applicable water ratesetting policies for the Project, as
177 described in subdivision (a) of Article 7 of this Contract;

178 (w) “Recent Historic Average” shall mean the most recent five-year average of the
179 final forecast of Water Made Available to the Contractor pursuant to this Contract or its preceding
180 contract(s);

181 (x) “Secretary” shall mean the Secretary of the Interior, a duly appointed successor,
182 or an authorized representative acting pursuant to any authority of the Secretary and through any
183 agency of the Department of the Interior;

184 (x2) "State Facilities" shall mean that portion of the SWP (including DWR's portion
185 of joint facilities), necessary to convey Project Water from the Sacramento-San Joaquin Delta (Delta)
186 to Reach 16A of the California Aqueduct;

187 (x3) "SWP" shall mean the California State Water Project;

188 (x4) "SWP Contractor" shall mean those entities with a long-term water supply
189 contract for water deliveries of SWP water on the date this Contract is executed;

190 (y) "Tiered Pricing Component" shall be the incremental amount to be paid
191 for each acre-foot of Water Delivered as described in subdivision (j) of Article 7 of this Contract;

192 (y2) "Transportation Minimum OMP&R Costs" and "Transportation Variable
193 OMP&R Costs" shall mean those costs as defined in the long-term SWP contracts and as annually
194 described in DWR Bulletin 132;

195 (z) "Water Delivered" or "Delivered Water" shall mean Project Water diverted for
196 use by the Contractor at the point(s) of delivery approved by the Contracting Officer;

197 (aa) "Water Made Available" shall mean the estimated amount of Project Water that
198 can be delivered to the Contractor for the upcoming Year as declared by the Contracting Officer,
199 pursuant to subdivision (a) of Article 4 of this Contract;

200 (bb) "Water Scheduled" shall mean Project Water made available to the Contractor
201 for which times and quantities for delivery have been established by the Contractor and Contracting
202 Officer, pursuant to subdivision (b) of Article 4 of this Contract; and

203 (cc) "Year" shall mean the period from and including March 1 of each Calendar
204 Year through the last day of February of the following Calendar Year.

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TERM OF CONTRACT

2. (a) This Contract shall be effective March 1, 2005, through February 28, 2030. In the event the Contractor wishes to renew this Contract beyond February 28, 2030, the Contractor shall submit a request for renewal in writing to the Contracting Officer no later than two years prior to the date this Contract expires. The renewal of this Contract insofar as it pertains to the furnishing of Irrigation Water to the Contractor shall be governed by subdivision (b) of this Article, and the renewal of this Contract insofar as it pertains to the furnishing of M&I Water to the Contractor shall be governed by subdivision (c) of this Article. The term of this Contract and its renewal insofar as it pertains to conveyance of water in SWP Facilities shall be governed by subdivision (e) of this Article.

(b) (1) Under terms and conditions of a renewal contract that are mutually agreeable to the parties hereto, and upon a determination by the Contracting Officer that at the time of contract renewal the conditions set forth in subdivision (b)(2) of this Article are met, and subject to Federal and State law, this Contract, insofar as it pertains to the furnishing of Irrigation Water to the Contractor, shall be renewed for a period of 25 years.

(2) The conditions which must be met for this Contract to be renewed are:
(i) the Contractor has prepared a water conservation plan that has been determined by the Contracting Officer in accordance with Article 26 of this Contract to meet the conservation and efficiency criteria for evaluating such plans established under Federal law; (ii) the Contractor is implementing an effective water conservation and efficiency program based on the Contractor's water conservation plan as required by Article 26 of this Contract; (iii) the Contractor is maintaining all water measuring devices and implementing all water measurement methods as approved by the Contracting Officer pursuant to Article 6 of this Contract; (iv) the Contractor has reasonably and beneficially used the Project Water supplies made available to it and, based on projected demands, is reasonably anticipated

228 and expects to fully utilize for reasonable and beneficial use the quantity of Project Water to be made
229 available to it pursuant to such renewal; (v) the Contractor is complying with all terms and conditions
230 of this Contract; and (vi) the Contractor has the physical and legal ability to deliver Project Water.

231 (3) The terms and conditions of the renewal contract described in
232 subdivision (b)(1) of this Article and any subsequent renewal contracts shall be developed consistent
233 with the parties' respective legal rights and obligations, and in consideration of all relevant facts and
234 circumstances, as those circumstances exist at the time of renewal, including, without limitation, the
235 Contractor's need for continued delivery of Project Water; environmental conditions affected by
236 implementation of the Contract to be renewed, and specifically changes in those conditions that
237 occurred during the life of the Contract to be renewed; the Secretary's progress toward achieving the
238 purposes of the CVPIA as set out in Section 3402 and in implementing the specific provisions of the
239 CVPIA; and current and anticipated economic circumstances of the region served by the Contractor.

240 (c) This Contract, insofar as it pertains to the furnishing of M&I
241 Water to the Contractor, shall be renewed for successive periods of up to 40 years each, which periods
242 shall be consistent with then-existing Reclamation-wide policy, under terms and conditions mutually
243 agreeable to the parties and consistent with Federal and State law. The Contractor shall be afforded the
244 opportunity to comment to the Contracting Officer on the proposed adoption and application of any
245 revised policy applicable to the delivery of M&I Water that would limit the term of any subsequent
246 renewal contract with the Contractor for the furnishing of M&I Water to less than 40 years.

247 (d) The Contracting Officer shall make a determination ten years after the date of
248 execution of this Contract, and every five years thereafter during the term of this Contract, of whether
249 a conversion of the relevant portion of this Contract to a contract under subsection 9(d) of the
250 Reclamation Project Act of 1939 can be accomplished pursuant to the Act of July 2, 1956 (70 Stat.

251 483). The Contracting Officer shall also make a determination ten years after the date of execution of
252 this Contract and every five years thereafter during the term of the Contract of whether a conversion of
253 the relevant portion of this Contract to a contract under subsection 9(c)(1) of the Reclamation Project
254 Act of 1939 can be accomplished. Notwithstanding any provision of this Contract, the Contractor
255 reserves and shall have all rights and benefits under the Act of July 2, 1956 (70 Stat 483). The
256 Contracting Officer anticipates that during the term of this Contract, all authorized Project construction
257 expected to occur will have occurred, and on that basis the Contracting Officer agrees upon such
258 completion to allocate all costs that are properly assignable to the Contractor, and agrees further that, at
259 any time after such allocation is made, and subject to satisfaction of the conditions set out in this
260 subdivision, this Contract shall, at the request of the Contractor, be converted to a contract under
261 subsection 9(d) or 9(c)(1), whichever is applicable, of the Reclamation Project Act of 1939, subject to
262 applicable Federal law and under stated terms and conditions mutually agreeable to the Contractor and
263 the Contracting Officer. A condition for such conversion to occur shall be a determination by the
264 Contracting Officer that, account being taken of the amount credited to return by the Contractor as
265 provided for under Federal Reclamation law, the remaining amount of construction costs assignable for
266 ultimate return by the Contractor can probably be repaid to the United States within the term of a
267 contract under subsection 9(d) or 9(c)(1), whichever is applicable. If the remaining amount of costs
268 that are properly assignable to the Contractor cannot be determined during the term of this Contract,
269 the Contracting Officer shall notify the Contractor, and provide the reason(s) why such a determination
270 could not be made. Further, the Contracting Officer shall make such a determination as soon thereafter
271 as possible so as to permit, upon request of the Contractor and satisfaction of the conditions set out
272 above, conversion to a contract under subsection 9(d) or 9(c)(1), whichever is applicable. In the event
273 such determination of costs has not been made at a time which allows conversion of this Contract

274 during the term of this Contract or the Contractor has not requested conversion of this Contract within
275 such term, the parties shall incorporate in any subsequent renewal contract as described in subdivision
276 (b) of this Article a provision that carries forth in substantially identical terms the provisions of this
277 subdivision.

278 (e) DWR's agreement to convey water under this Contract shall be effective until
279 February 28, 2030. Thereafter, DWR and the Contractor may renew the agreement to convey for
280 additional periods on terms mutually agreeable to the parties. The parties acknowledge that operation
281 of the SWP, including the State Facilities, is not, and shall not be, subject to Federal Reclamation law.

282 WATER TO BE MADE AVAILABLE AND DELIVERED TO THE CONTRACTOR

283 3. (a) During each Year, consistent with all applicable State water rights, permits, and
284 licenses; Federal law; and subject to the provisions set forth in Articles 11 and 12 of this Contract, the
285 Contracting Officer shall make available in the Delta for delivery to the Contractor 1,142 acre-feet of
286 Project Water for irrigation and M&I purposes. Cross Valley Contractors shall have a primary priority
287 to pumping capacity made available by the SWP for CVP purposes up to the allocation made for CVP
288 irrigation contractors south of the Delta. Allocations of water supply to Cross Valley Contractors and
289 any additional pumping capacity made available by SWP for Cross Valley Contractors' purposes shall
290 be addressed in the Operations Manual. Water Delivered to the Contractor in accordance with this
291 subdivision shall be scheduled, and paid for pursuant to the provisions of Articles 4 and 7 of this
292 Contract, attached exhibits, and the Operations Manual (including any subsequent modifications
293 thereto).

294 (b) Because the capacity of the Project to deliver Project Water has been
295 constrained in recent years and may be constrained in the future due to many factors including
296 hydrologic conditions and implementation of Federal and State laws, the likelihood of the Contractor

297 actually receiving the full amount of Project Water set out in subdivision (a) of this Article in any
298 given Year is uncertain. The Contracting Officer's modeling referenced in the PEIS projected that the
299 Contract Total set forth in this Contract will not be available to the Contractor in many years. During
300 the most recent five years, the Recent Historic Average of water made available to the Contractor was
301 751 acre-feet. Nothing in subdivision (b) of this Article shall affect the rights and obligations of the
302 parties under any provision of this Contract.

303 (c) The Contractor shall utilize the Project Water in accordance with all applicable
304 legal requirements.

305 (d) The Contractor shall make reasonable and beneficial use of all water furnished
306 pursuant to this Contract. Groundwater recharge programs (direct, indirect or in lieu), groundwater
307 banking programs, surface water storage programs, and other similar programs utilizing Project Water
308 or other water furnished pursuant to this Contract conducted within the Contractor's Service Area
309 which are consistent with applicable State law and result in use consistent with Federal Reclamation
310 law will be allowed; Provided, That any direct recharge program(s) is (are) described in the
311 Contractor's water conservation plan submitted pursuant to Article 26 of this Contract; Provided,
312 further, That such water conservation plan demonstrates sufficient lawful uses exist in the Contractor's
313 Service Area so that using a long-term average, the quantity of Delivered Water is demonstrated to be
314 reasonable for such uses and in compliance with Federal Reclamation law. Groundwater recharge
315 programs, groundwater banking programs, surface water storage programs, and other similar programs
316 utilizing Project Water or other water furnished pursuant to this Contract conducted outside the
317 Contractor's Service Area may be permitted upon written approval of the Contracting Officer, which
318 approval will be based upon environmental documentation, Project Water rights, and Project

319 operational concerns. The Contracting Officer will address such concerns in regulations, policies, or
320 guidelines.

321 (e) The Contractor shall comply with requirements applicable to the Contractor in
322 biological opinion(s) prepared as a result of a consultation regarding the execution of this Contract
323 undertaken pursuant to Section 7 of the Endangered Species Act of 1973 (ESA), as amended, that are
324 within the Contractor's legal authority to implement. The Existing Contract, which evidences in
325 excess of 28 years of diversions for irrigation and/or M&I purposes of the quantities of water provided
326 in subdivision (a) of Article 3 of this Contract, will be considered in developing an appropriate
327 baseline for the biological assessment(s) prepared pursuant to the ESA, and any other needed
328 environmental review. Nothing herein shall be construed to prevent the Contractor from challenging
329 or seeking judicial relief in a court of competent jurisdiction with respect to any biological opinion or
330 other environmental documentation referred to in this Article.

331 (f) Following the declaration of Water Made Available under Article 4 of this
332 Contract, the Contracting Officer will make a determination whether Project Water, or other water
333 available to the Project, can be made available to the Contractor in addition to the Contract Total under
334 Article 3 of this Contract during the Year without adversely impacting other Project Contractors. At
335 the request of the Contractor, the Contracting Officer will consult with the Contractor prior to making
336 such a determination. If the Contracting Officer determines that Project Water, or other water
337 available to the Project, can be made available to the Contractor, the Contracting Officer will announce
338 the availability of such water and shall so notify the Contractor as soon as practicable. The
339 Contracting Officer will thereafter meet with the Contractor and other Project Contractors capable of
340 taking such water to determine the most equitable and efficient allocation of such water. If the
341 Contractor requests the delivery of any quantity of such water, the Contracting Officer shall make such

342 water available to the Contractor in accordance with applicable statutes, regulations, guidelines, and
343 policies. If the Contracting Officer determines that there is an unusually large water supply not
344 otherwise storable for Project purposes or infrequent and otherwise unmanaged flood flows of short
345 duration from the Friant Division, then Friant Division Project Water may be made available to the
346 Contractor as Section 215 Water if the Contractor enters into a temporary contract, not to exceed one
347 year, with the United States for the delivery of such water or, as otherwise provided for in Federal
348 Reclamation law and associated regulations: Provided, That such water shall be first made available to
349 the original 28 long-term Friant Division contractors. Water in addition to the quantities provided for
350 in this Contract made available to the Contractor by the Contracting Officer shall be scheduled,
351 conveyed and/or stored by DWR only to the extent that DWR has provided separate approval to do so.

352 (g) The Contractor may request permission to reschedule for use during the
353 subsequent Year some or all of the Water Made Available to the Contractor during the current Year
354 referred to as “carryover.” The Contractor may request permission to use during the current Year a
355 quantity of Project Water which may be made available by the United States to the Contractor during
356 the subsequent Year referred to as “preuse”. The Contracting Officer’s written approval may permit
357 such uses in accordance with applicable statutes, regulations, guidelines, and policies.

358 (h) The Contractor’s right pursuant to Federal Reclamation law and applicable State
359 law to the reasonable and beneficial use of Water Delivered pursuant to this Contract during the term
360 thereof and any subsequent renewal contracts, as described in Article 2 of this Contract, during the
361 terms thereof shall not be disturbed so long as the Contractor shall fulfill all of its obligations under
362 this Contract and any renewals thereof. Nothing in the preceding sentence shall affect the Contracting
363 Officer’s ability to impose shortages under Article 11 or subdivision (b) of Article 12 of this Contract
364 or applicable provisions of any subsequent renewal contracts.

365 (i) Project Water furnished to the Contractor pursuant to this Contract may be
366 delivered for purposes other than those described in subdivisions (m) and (o) of Article 1 of this
367 Contract upon written approval by the Contracting Officer in accordance with the terms and conditions
368 of such approval.

369 (j) The Contracting Officer shall make reasonable efforts to protect the water rights
370 necessary for the Project and to provide the water available under this Contract. The Contracting
371 Officer shall not object to participation by the Contractor, in the capacity and to the extent permitted by
372 law, in administrative proceedings related to the Project Water rights; Provided, That the Contracting
373 Officer retains the right to object to the substance of the Contractor's position in such a proceeding;
374 Provided further, That in such proceedings the Contracting Officer shall recognize the Contractor has a
375 legal right under the terms of this Contract to use Project Water.

376 (k) Conveyance and/or storage of Project Water by DWR shall be subject to
377 capacity available in State Facilities in excess of capacity determined by DWR in its sole discretion to
378 be needed for all SWP operations. For purposes of determining the available capacity under this
379 Contract, the deliveries of Project Water to the Contractor shall not be considered a "service to long-
380 term SWP Contractors," notwithstanding any arrangement the Contractor may have with a SWP
381 contractor. Conveyance and/or storage for the Contractor may be curtailed prior or subsequent to
382 approval of the Contractor's schedule under Article 4 of this Contract, in the event DWR determines it
383 will interfere with the delivery of water to SWP Contractors or other SWP operations necessary to
384 meet long-term obligations of the SWP, including delivery of water to SWP storage or reregulation of
385 stored water for delivery to SWP Contractors.

386 (l) If in any Year after DWR and the Contracting Officer have approved a schedule
387 or any revision thereof submitted in accordance within subdivision (a) and (b) of Article 4 of this

388 Contract, and if the Contracting Officer and/or DWR are unable to make water of suitable quality
389 available in the quantities and at the times requested in the schedule and the Contractor does not elect
390 to receive and does not receive such water at other times during such Year, then the Contractor shall be
391 entitled to an adjustments for overpayment as provided in subdivision (c) of Article 7, subdivision (d)
392 of Article 8, and Article 10 of this Contract. Notwithstanding any other provision of law, this shall be
393 the Contractor's sole remedy against the State of California, DWR, its officers, agents, and employees
394 for failure to deliver a quantity water of suitable quality under this Contract for any reason.

395 TIME FOR DELIVERY OF WATER

396 4. (a) On or about February 20 of each Calendar Year, the Contracting Officer shall
397 announce the Contracting Officer's expected declaration of the Water Made Available. Such
398 declaration will be expressed in terms of both Water Made Available and the Recent Historic Average
399 and will be updated monthly, and more frequently if necessary, based on then-current operational and
400 hydrologic conditions and a new declaration with changes, if any, to the Water Made Available will be
401 made. The Contracting Officer shall provide forecasts of Project operations and the basis of the
402 estimate, with relevant supporting information, upon the written request of the Contractor.
403 Concurrently with the declaration of the Water Made Available, the Contracting Officer shall provide
404 the Contractor with the updated Recent Historic Average. The declaration of Project operations will be
405 expressed in terms of both Water Made Available and the Recent Historic Average.

406 (b) On or before each March 1 and at such other times as necessary, the Contractor,
407 after approval of the receiving agency on behalf of the Contractor, shall submit to DWR and the
408 Contracting Officer a written schedule, satisfactory to the Contracting Officer and consistent with the
409 criteria specified in the Operations Manual. The written schedule shall show the monthly quantities of
410 Project Water to be delivered by the United States to the Contractor pursuant to this Contract for the

411 Year commencing on such March 1. The Contracting Officer shall use all reasonable means to deliver
412 Project Water according to the approved schedule for the Year commencing on such March 1.

413 (c) The Contractor shall not schedule Project Water in excess of the quantity of
414 Project Water the Contractor intends to put to reasonable and beneficial use within the Contractor's
415 Service Area or to sell, transfer or exchange pursuant to Article 9 of this Contract during any Year.

416 (d) Subject to the conditions set forth in subdivision (a) of Article 3 of this Contract,
417 the United States and DWR shall deliver Project Water to the Contractor in accordance with the initial
418 schedule submitted by the Contractor pursuant to subdivision (b) of this Article, or any written
419 revision(s), satisfactory to the Contracting Officer, thereto submitted within a reasonable time prior to
420 the date(s) on which the requested change(s) is/are to be implemented.

421 (e) Scheduling and delivery of Project Water to the Contractor shall be in
422 accordance with detailed procedures set forth in the Operations Manual as it may be amended from
423 time to time.

424 POINT OF DIVERSION AND RESPONSIBILITY FOR DISTRIBUTION OF WATER

425 5. (a) Project Water scheduled pursuant to subdivision (b) of Article 4 of this Contract
426 shall be delivered to the Contractor at a point or points of delivery either on Project and/or State
427 facilities or another location or locations mutually agreed to in writing by the Contracting Officer,
428 DWR, and the Contractor. The parties acknowledge that Project Water to be furnished to the
429 Contractor pursuant to this Contract shall be conveyed by DWR and delivered to the Contractor by
430 direct delivery via the Cross Valley Canal and/or by exchange arrangements involving Arvin-Edison
431 Water Storage District or others. The parties further acknowledge that such exchange arrangements
432 are not transfers subject to Section 3405(a) of CVPIA. Notwithstanding Article 9 of this Contract,
433 such exchange arrangements, other than the previously approved exchange arrangements with Arvin-

434 Edison Water Storage District, shall be submitted to the Contracting Officer for approval in accordance
435 with principles historically applied by the Contracting Officer in approving Cross Valley exchange
436 arrangements. DWR shall have no obligation to make such exchange arrangements or be responsible
437 for water transported in facilities that are not a part of the SWP.

438 (b) Omitted.

439 (b2) When Project Water is made available by the Contracting Officer at Clifton
440 Court Forebay, DWR shall provide to the Contractor, subject to the availability of capacity as
441 determined by DWR, conveyance from the Delta and storage in DWR's share of storage at San Luis
442 Reservoir, if necessary, of such Project Water consistent with subdivision (k) of Article 3, the
443 following provisions, and the Operations Manual;

444 (1) The Contracting Officer shall deliver or cause to be delivered into the
445 DWR's Clifton Court Forebay, or at other points mutually agreed to by the parties in accordance with
446 Article 5, Project Water in such quantities and of such quality as shall be sufficient to perform the
447 Contracting Officer's and DWR's obligation to furnish water to the Contractor as set forth in this
448 contract. Such deliveries into Clifton Court Forebay shall be made at such times and rates of flow as
449 the Contracting Officer and DWR shall agree.

450 (2) DWR, in accordance with an approved Project Water delivery schedule,
451 shall convey the amount of water delivered into DWR's Clifton Court Forebay by the Contracting
452 Officer directly: (i) to turnouts from the California Aqueduct from Reaches 3 through 16A or to other
453 points of diversion mutually agreed to in writing by DWR and the Contractor, or (ii) to DWR or
454 Federal share of storage in San Luis Reservoir for later release and delivery to the Contractor or (iii) to
455 replace water delivered to the Contractor from DWR's share of San Luis Reservoir prior to DWR
456 receiving Project Water from the Contracting Officer, to the extent DWR determines under subdivision

457 (k) of Article 3 that capacity (and water in the event of an exchange) is available for such conveyance,
458 storage, or exchange (if any). Such deliveries of Project Water shall be required to be made pursuant
459 to subdivision (k) of Article 3 and in a manner which will not increase the cost of or adversely affect
460 SWP operations and the quantity or quality of water deliveries to SWP Contractors.

461 (3) If DWR delivers water to the Contractor from DWR's share of storage in
462 San Luis Reservoir prior to the Contracting Officer providing Project Water at DWR's Clifton Court
463 Forebay, the United States shall return a like amount of water to DWR pursuant to the procedures set
464 forth in the Operations Manual.

465 (4) The total amount of Project Water delivered at Clifton Court Forebay to
466 DWR by the Contracting Officer shall include water to compensate DWR for water conveyance and
467 storage losses incurred in the delivery of Project Water to the Contractor. The amount of such
468 conveyance and storage losses will be determined pursuant to procedures set forth in the Operations
469 Manual.

470 (5) Project Water received by DWR at Clifton Court Forebay for
471 conveyance and/or storage for delivery to the Contractor will be commingled with waters of DWR
472 which are pumped through facilities of the California Aqueduct and with other waters of both the
473 United States and DWR in the joint use facilities of the San Luis Unit.

474 (6) Priorities for use of DWR's share of storage at San Luis Reservoir for
475 storage of Project Water shall be subject to subdivision (k) of Article 3 and all DWR obligations to the
476 SWP operations and SWP Contractors and to the criteria specified in the Operations Manual.

477 (7) Subject to the necessary arrangements, the Contracting Officer shall
478 transmit or cause to be transmitted, by exchange or otherwise, such quantities of power as shall be
479 required by DWR to pump through its Delta Pumping Plant and its share of Dos Amigos Pumping

480 Plant, the quantities of Project Water transported into Clifton Court Forebay pursuant to (1) of this
481 subdivision.

482 (8) DWR shall furnish the Contracting Officer with such information as the
483 Contracting Officer and DWR agree is needed regarding the timing and quantities of power required
484 by DWR to pump Project Water. Such information shall be exchanged between the Contracting
485 Officer and DWR in accordance with provisions set forth in the Operations Manual.

486 (9) The Contracting Officer and DWR may, under terms and conditions
487 satisfactory to both, and in accordance with applicable law, exchange water and/or power necessary for
488 delivery of Project Water to the Contractor under terms of this Contract. Such exchange shall be in
489 accordance with the provisions set forth in the Operations Manual.

490 (b3) To the extent that Friant Division Project Water exceeds Friant Division
491 Contract demand and other Project purposes, as determined by the Contracting Officer, and if the
492 Contractor so requests, the Contracting Officer, subject to subdivision (d) of Article 3 of this Contract,
493 shall make Project Water provided for in subdivision (a) of Article 3 of this Contract available from
494 such Friant Division supplies.

495 (b4) Project Water may be provided by the Contracting Officer to the Contractor, at
496 the Contractor's request and subject to the terms and conditions of this Contract, through Federal Delta
497 diversion and conveyance facilities and/or stored in the Federal share of storage at San Luis Reservoir
498 for reregulation for later delivery to the Contractor to the extent such diversion, conveyance and/or
499 storage does not diminish the ability of the Project to deliver Project Water to users in the Delta
500 Division, San Luis Unit and San Felipe Division service areas pursuant to existing contracts and
501 assignments or any renewals thereof, to meet current Reclamation commitments to Pajaro Valley

502 Water Management Agency, or to meet other legal obligations of the Project including, but not limited
503 to agreements related to the joint operation of the state and Federal projects..

504 (c) The Contractor shall deliver Irrigation Water in accordance with any applicable
505 land classification provisions of Federal Reclamation law and the associated regulations. The
506 Contractor shall not deliver Project Water to land outside the Contractor's Service Area unless
507 approved in advance by the Contracting Officer.

508 (d) All Water Delivered to the Contractor pursuant to this Contract shall be
509 measured and recorded with equipment furnished, installed, operated, and maintained by the United
510 States, DWR or the Operating Non-Federal Entity/Entities at the point or points of delivery established
511 pursuant to subdivision (a) of this Article. Upon the request of either party to this Contract, the
512 Contracting Officer or DWR shall investigate, or cause to be investigated by the appropriate Operating
513 Non-Federal Entity, the accuracy of such measurements and shall take any necessary steps to adjust
514 any errors appearing therein. For any period of time when accurate measurements have not been
515 made, the Contracting Officer shall consult with the Contractor and the appropriate Operating Non-
516 Federal Entity prior to making a final determination of the quantity delivered for that period of time.

517 (e) Neither the Contracting Officer, nor DWR, nor any Operating Non-Federal
518 Entity/Entities shall be responsible for the control, carriage, handling, use, disposal, or distribution of
519 Water Delivered to the Contractor pursuant to this Contract beyond the delivery points specified in
520 subdivision (a) of this Article. The Contractor shall indemnify the United States, DWR, and their
521 officers, employees, agents, and assigns on account of damage or claim of damage of any nature
522 whatsoever for which there is legal responsibility, including property damage, personal injury, or death
523 arising out of or connected with the control, carriage, handling, use, disposal, or distribution of such
524 Water Delivered beyond such delivery points, except for any damage or claim arising out of: (i) acts

525 or omissions of the Contracting Officer, DWR, or any of their officers, employees, agents, or assigns,
526 including the Operating Non-Federal Entity/Entities, with the intent of creating the situation resulting
527 in any damage or claim; (ii) willful misconduct of the Contracting Officer, DWR, or any of their
528 officers, employees, agents, or assigns, including the Operating Non-Federal Entity/Entities;
529 (iii) negligence of the Contracting Officer or any of his officers, employees, agents, or assigns
530 including the Operating Non-Federal Entity/Entities; or (iv) damage or claims resulting from a
531 malfunction of facilities owned and/or operated by the United States, DWR, or the Operating Non-
532 Federal Entity/Entities; Provided, That the Contractor is not the Operating Non-Federal Entity that
533 owned or operated the malfunctioning facility(ies) from which the damage claim arose. In the event
534 any such claim or liability, referenced in this Article or otherwise arising from this Contract, is made
535 against DWR, its officers or its employees, the Contractor agrees to defend, indemnify and hold each
536 of them harmless from such claim to the extent such claim does not arise from an error or omission of
537 DWR related to the carriage and control of Project Water made available to the Contractor by the
538 Contracting Officer.

539 MEASUREMENT OF WATER WITHIN THE CONTRACTOR'S SERVICE AREA

540 6. (a) The Contractor has established a measuring program satisfactory to the
541 Contracting Officer. The Contractor shall ensure that all surface water delivered for irrigation
542 purposes within the Contractor's Service Area is measured at each agricultural turnout and such water
543 delivered for M&I purposes is measured at each M&I service connection. The water measuring
544 devices or water measuring methods of comparable effectiveness must be acceptable to the
545 Contracting Officer. The Contractor shall be responsible for installing, operating, and maintaining and
546 repairing all such measuring devices and implementing all such water measuring methods at no cost to
547 the United States. The Contractor shall use the information obtained from such water measuring

548 devices or water measuring methods to ensure its proper management of the water, to bill water users
549 for water delivered by the Contractor; and, if applicable, to record water delivered for M&I by
550 customer class as defined in the Contractor's water conservation plan provided for in Article 26 of this
551 Contract. Nothing herein contained, however, shall preclude the Contractor from establishing and
552 collecting any charges, assessments, or other revenues authorized by California law. The Contractor
553 shall include a summary of all its annual surface water deliveries in the annual report described in
554 subdivision (c) of Article 26.

555 (b) To the extent the information has not otherwise been provided, upon execution
556 of this Contract, the Contractor shall provide to the Contracting Officer a written report describing the
557 measurement devices or water measuring methods being used or to be used to implement subdivision
558 (a) of this Article and identifying the agricultural turnouts and the M&I service connections or
559 alternative measurement programs approved by the Contracting Officer, at which such measurement
560 devices or water measuring methods are being used, and, if applicable, identifying the locations at
561 which such devices and/or methods are not yet being used including a time schedule for
562 implementation at such locations. The Contracting Officer shall advise the Contractor in writing
563 within 60 days as to the adequacy of, and necessary modifications, if any, of the measuring devices or
564 water measuring methods identified in the Contractor's report and if the Contracting Officer does not
565 respond in such time, they shall be deemed adequate. If the Contracting Officer notifies the Contractor
566 that the measuring devices or methods are inadequate, the parties shall within 60 days following the
567 Contracting Officer's response, negotiate in good faith the earliest practicable date by which the

568 Contractor shall modify said measuring devices and/or measuring methods as required by the
569 Contracting Officer to ensure compliance with subdivision (a) of this Article.

570 (c) All new surface water delivery systems installed within the Contractor's Service
571 Area after the effective date of this Contract shall also comply with the measurement provisions
572 described in subdivision (a) of this Article.

573 (d) The Contractor shall inform the Contracting Officer and the State of California
574 in writing by April 30 of each Year of the monthly volume of surface water delivered within the
575 Contractor's Service Area during the previous Year.

576 (e) The Contractor shall inform the Contracting Officer, DWR, and the Operating
577 Non-Federal Entity/Entities on or before the 20th calendar day of each month of the quantity of
578 Irrigation and M&I Water taken during the preceding month.

579 RATES AND METHOD OF PAYMENT FOR WATER

580 7. (a) The Contractor shall pay the United States as provided in this Article for all
581 Delivered Water at Rates, Charges, and the Tiered Pricing Component established in accordance with:
582 (i) the Secretary's ratesetting policy for Irrigation Water adopted in 1988 and the Secretary's then-
583 existing ratesetting policy for M&I Water. Such ratesetting policies shall be amended, modified, or
584 superseded only through a public notice and comment procedure; (ii) applicable Federal Reclamation
585 law and associated rules and regulations, or policies; and (iii) other applicable provisions of this
586 Contract. Payments shall be made by cash transaction, electronic funds transfer, or any other
587 mechanism as may be agreed to in writing by the Contractor and the Contracting Officer. The Rates,
588 Charges, and Tiered Pricing Component applicable to the Contractor upon execution of this Contract
589 are set forth in Exhibit "B," as may be revised annually.

590 (b) The Contracting Officer shall notify the Contractor of the Rates, Charges, and
591 Tiered Pricing Component as follows:

592 (1) Prior to July 1 of each Calendar Year, the Contracting Officer shall
593 provide the Contractor an estimate of the Charges for Project Water that will be applied to the period
594 October 1, of the current Calendar Year, through September 30, of the following Calendar Year, and
595 the basis for such estimate. The Contractor shall be allowed not less than two months to review and
596 comment on such estimates. On or before September 15 of each Calendar Year, the Contracting
597 Officer shall notify the Contractor in writing of the Charges to be in effect during the period October 1
598 of the current Calendar Year, through September 30, of the following Calendar Year, and such
599 notification shall revise Exhibit "B."

600 (2) Prior to October 1 of each Calendar Year, the Contracting Officer shall
601 make available to the Contractor an estimate of the Rates and Tiered Pricing Component for Project
602 Water for the following Year and the computations and cost allocations upon which those Rates are
603 based. The Contractor shall be allowed not less than two months to review and comment on such
604 computations and cost allocations. By December 31 of each Calendar Year, the Contracting Officer
605 shall provide the Contractor with the final Rates and Tiered Pricing Component to be in effect for the
606 upcoming Year, and such notification shall revise Exhibit "B".

607 (c) Except as otherwise provided in the Operations Manual, at the time the
608 Contractor submits the initial schedule for the delivery of Project Water for each Year pursuant to
609 subdivision (b) of Article 4 of this Contract, the Contractor shall make an advance payment to the
610 United States equal to the total amount payable pursuant to the applicable Rate(s) set under subdivision
611 (a) of this Article, for the Project Water scheduled to be delivered pursuant to this Contract during the
612 first two calendar months of the Year. Before the end of the first month and before the end of each

613 calendar month thereafter, the Contractor shall make an advance payment to the United States, at the
614 Rate(s) set under subdivision (a) of this Article, for the Water Scheduled to be delivered pursuant to
615 this Contract during the second month immediately following. Adjustments between advance
616 payments for Water Scheduled and payments at Rates due for Water Delivered shall be made before
617 the end of the following month; Provided, That any revised schedule submitted by the Contractor
618 pursuant to Article 4 of this Contract which increases the amount of Water Delivered pursuant to this
619 Contract during any month shall be accompanied with appropriate advance payment, at the Rates then
620 in effect, to assure that Project Water is not delivered to the Contractor in advance of such payment. In
621 any month in which the quantity of Water Delivered to the Contractor pursuant to this Contract equals
622 the quantity of Water Scheduled and paid for by the Contractor, no additional Project Water shall be
623 delivered to the Contractor unless and until an advance payment at the Rates then in effect for such
624 additional Project Water is made. Final adjustment between the advance payments for the Water
625 Scheduled and payments for the quantities of Water Delivered during each Year pursuant to this
626 Contract shall be made as soon as practicable but no later than April 30th of the following Year, or 60
627 days after the delivery of Project Water carried over under subdivision (g) of Article 3 of this Contract
628 if such water is not delivered by the last day of February.

629 (d) The Contractor shall also make a payment in addition to the Rate(s) in
630 subdivision (c) of this Article to the United States for Water Delivered, at the Charges and the
631 appropriate Tiered Pricing Component then in effect, before the end of the month following the month
632 of delivery; Provided, That the Contractor may be granted an exception from the Tiered Pricing
633 Component pursuant to subdivision (j)(2) of this Article. The payments shall be consistent with the
634 quantities of Irrigation Water and M&I Water Delivered as shown in the water delivery report for the
635 subject month prepared by the Operating Non-Federal Entity/Entities or, if there is no Operating

636 Non-Federal Entity, by the Contracting Officer. The water delivery report shall be deemed a bill for
637 the payment of Charges and the applicable Tiered Pricing Component for Water Delivered.
638 Adjustment for overpayment or underpayment of Charges shall be made through the adjustment of
639 payments due to the United States for Charges for the next month. Any amount to be paid for past due
640 payment of Charges and the Tiered Pricing Component shall be computed pursuant to Article 20 of
641 this Contract.

642 (e) The Contractor shall pay for any Water Delivered under subdivision (a), (f), or
643 (g) of Article 3 of this Contract as determined by the Contracting Officer pursuant to applicable
644 statutes, associated regulations, any applicable provisions of guidelines or ratesetting policies;
645 Provided, That the Rate for Water Delivered under subdivision (f) of Article 3 of this Contract shall be
646 no more than the otherwise applicable Rate for Irrigation Water or M&I Water under subdivision (a) of
647 this Article.

648 (f) Payments to be made by the Contractor to the United States under this Contract
649 may be paid from any revenues available to the Contractor.

650 (g) All revenues received by the United States from the Contractor relating to the
651 delivery of Project Water or the delivery of non-Project water through Project facilities shall be
652 allocated and applied in accordance with Federal Reclamation law and the associated rules or
653 regulations, and the then-current Project ratesetting policies for M&I Water or Irrigation Water.

654 (h) The Contracting Officer shall keep its accounts pertaining to the administration
655 of the financial terms and conditions of its long-term contracts, in accordance with applicable Federal
656 standards, so as to reflect the application of Project costs and revenues. The Contracting Officer shall,
657 each Year upon request of the Contractor, provide to the Contractor a detailed accounting of all Project
658 and Contractor expense allocations, the disposition of all Project and Contractor revenues, and a

659 summary of all water delivery information. The Contracting Officer and the Contractor shall enter into
660 good faith negotiations to resolve any discrepancies or disputes relating to accountings, reports, or
661 information.

662 (i) The parties acknowledge and agree that the efficient administration of this
663 Contract is their mutual goal. Recognizing that experience has demonstrated that mechanisms,
664 policies, and procedures used for establishing Rates, Charges, and Tiered Pricing Components, and/or
665 for making and allocating payments, other than those set forth in this Article may be in the mutual best
666 interest of the parties, it is expressly agreed that the parties may enter into agreements to modify the
667 mechanisms, policies, and procedures for any of those purposes while this Contract is in effect without
668 amending this Contract.

669 (j) (1) Beginning at such time as deliveries of Project Water in a Year exceed
670 80 percent of the Contract Total, then before the end of the month following the month of delivery the
671 Contractor shall make an additional payment to the United States equal to the applicable Tiered Pricing
672 Component. The Tiered Pricing Component for the amount of Water Delivered in excess of 80
673 percent of the Contract Total, but less than or equal to 90 percent of the Contract Total, shall equal
674 one-half of the difference between the Rate established under subdivision (a) of this Article and the
675 Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. The Tiered
676 Pricing Component for the amount of Water Delivered which exceeds 90 percent of the Contract Total
677 shall equal the difference between (i) the Rate established under subdivision (a) of this Article and
678 (ii) the Irrigation Full Cost Water Rate or M&I Full Cost Water Rate, whichever is applicable. For all
679 Water Delivered pursuant to subdivision (a) of Article 3 of this Contract which is in excess of 80
680 percent of the Contract Total, this increment shall be deemed to be divided between Irrigation Water

681 and M&I Water in the same proportion as actual deliveries of each bear to the cumulative total Water
682 Delivered.

683 (2) Subject to the Contracting Officer's written approval, the Contractor may
684 request and receive an exemption from such Tiered Pricing Components for Project Water delivered to
685 produce a crop which the Contracting Officer determines will provide significant and quantifiable
686 habitat values for waterfowl in fields where the water is used and the crops are produced; Provided,
687 That the exemption from the Tiered Pricing Component for Irrigation Water shall apply only if such
688 habitat values can be assured consistent with the purposes of the CVPIA through binding agreements
689 executed with or approved by the Contracting Officer prior to use of such water.

690 (3) For purposes of determining the applicability of the Tiered Pricing
691 Component pursuant to this Article, Water Delivered shall include Project Water that the Contractor
692 transfers to others but shall not include Project Water transferred to the Contractor, nor shall it include
693 the additional water provided to the Contractor under the provisions of subdivision (f) of Article 3 of
694 this Contract.

695 (k) For the term of this Contract, Rates under the respective ratesetting policies will
696 be established to recover only reimbursable O&M (including any deficits) and capital costs of the
697 Project, as those terms are used in the then-current Project ratesetting policies, and interest, where
698 appropriate, except in instances where a minimum Rate is applicable in accordance with the relevant
699 Project ratesetting policy. Changes of significance in practices which implement the Contracting
700 Officer's ratesetting policies will not be implemented until the Contracting Officer has provided the
701 Contractor an opportunity to discuss the nature, need, and impact of the proposed change.

702 (l) Except as provided in subsections 3405(a)(1)(B) and 3405(f) of the CVPIA, the
703 Rates for Project Water transferred by the Contractor shall be the Contractor's Rates adjusted upward

704 or downward to reflect the changed costs, if any, incurred by the Contracting Officer in the delivery of
 705 the transferred Project Water to the transferee's point of delivery in accordance with the then-
 706 applicable Project ratesetting policy. If the Contractor is receiving lower Rates and Charges because of
 707 inability to pay and is transferring Project Water to another entity whose Rates and Charges are not
 708 adjusted due to inability to pay, the Rates and Charges for transferred Project Water shall be the
 709 Contractor's Rates and Charges and will not be adjusted to reflect the Contractor's inability to pay.

710 (m) Pursuant to the Act of October 27, 1986 (100 Stat. 3050), the Contracting
 711 Officer is authorized to adjust determinations of ability to pay every five years.

712 (n) With respect to the Rates for M&I Water the Contractor asserts that it is
 713 not legally obligated to pay any Project deficits claimed by the United States to have accrued as of the
 714 date of this Contract or deficit-related interest charges thereon. By entering into this Contract, the
 715 Contractor does not waive any legal rights or remedies that it may have with respect to such disputed
 716 issues. Notwithstanding the execution of this Contract and payments made hereunder, the Contractor
 717 may challenge in the appropriate administrative or judicial forums: (1) the existence, computation, or
 718 imposition of any deficit charges accruing during the term of the Existing Contract and any preceding
 719 interim renewal contracts, if applicable; (2) interest accruing on any such deficits; (3) the inclusion of
 720 any such deficit charges or interest in the Rates; (4) the application by the United States of payments
 721 made by the Contractor under its Existing Contract and any preceding interim renewal contracts, if
 722 applicable; and (5) the application of such payments in the Rates. The Contracting Officer agrees that
 723 the Contractor shall be entitled to the benefit of any administrative or judicial ruling in favor of any
 724 Project M&I contractor on any of these issues, and credits for payments heretofore made; Provided,
 725 That the basis for such ruling is applicable to the Contractor.

726 (o) The Contractor and the Contracting Officer concur that, as of the effective date
727 of this Contract, the Contractor has no non-interest-bearing O&M deficits and shall have no further
728 liability therefor.

729 RATES AND METHOD OF PAYMENT FOR CONVEYANCE
730 AND OTHER SERVICES BY DWR

731 8. (a) To the extent Project Water is conveyed through State Facilities, payment for
732 conveyance of water through the State Facilities shall be made by the Contractor directly to DWR.
733 Exhibit "C" sets forth the charges and interest rates applicable at the time this long-term renewal
734 contract is executed. DWR shall invoice the Contractor monthly for all conveyance charges owing for
735 the previous month. Payment by the Contractor to DWR shall be due 30 days after the date of the
736 invoice. Any payment not received within 30 days after the date of the invoice shall be considered
737 delinquent. Delinquent charges shall be calculated in accordance with Exhibit "C" of this Contract;
738 Provided, That no interest shall be charged to or be paid by the Contractor unless such delinquency
739 continues for more than 30 days in total.

740 (b) Omitted.

741 (c) Conveyance charges for the Contractor shall be determined by DWR on the
742 same basis it uses to determine conveyance charges for use of SWP facilities by entities that are not
743 SWP contractors. The method for determining this charge is described in DWR's annual Bulletin 132.
744 The charge for conveyance of water under this Contract shall be set forth in Exhibit "C" of this
745 Contract and revised annually.

746 (1) In accordance with subdivision (c) of this Article, when DWR provides
747 conveyance directly from the Delta or from the Federal share of storage at San Luis Reservoir, the unit
748 conveyance charge shall equal at a minimum the sum of the following, as determined by DWR:

749 (i) The equivalent unit transportation capital and Minimum OMP&R Costs for those reaches of the

750 California Aqueduct utilized for the delivery; (ii) The portion of the Delta Water Rate for Reaches 1,
751 2A, 2B, and 3 of the California Aqueduct; (iii) The replacement component of the Transportation
752 Variable OM&R Costs for the Harvey O. Banks Delta Pumping Plant and DWR's share of the
753 Dos Amigos Pumping Plant; (iv) A charge to offset direct fish losses associated with pumping at the
754 Banks Pumping Plant, pursuant to the December 30, 1986, agreement between the California
755 Department of Fish and Game and DWR; and (v) The incremental costs, if any, caused by the
756 conveyance and delivery of Project Water to the Contractor which, unless included in the increased
757 charges to the Contractor, would result in increased charges to the SWP Contractors or increased costs
758 to DWR.

759 (2) When DWR provides conveyance from the State's share of storage in
760 San Luis Reservoir, the unit charge shall equal the sum of the following as determined by DWR:
761 (i) The San Luis Facilities portion of the Delta Water Rate; (ii) The net unit energy cost to replace
762 water in San Luis Reservoir; and (iii) The sum of all unit charges provided under subdivision (c)(1) of
763 this Article.

764 (d) Should DWR deliver Project Water to San Luis Reservoir on behalf of the
765 Contractor and it is later determined by DWR that capacity to store such Project Water in DWR's share
766 of San Luis Reservoir is no longer available because of need for such storage to meet SWP operations
767 and obligations to SWP Contractors and the Contractor cannot take delivery of such Project Water,
768 DWR shall relieve the Contractor of its obligations to pay DWR for all such Project Water so
769 transported, stored, and no longer available to the Contractor. DWR shall reimburse the Contractor for
770 payments which have previously been made to DWR for any such conveyed and stored supply, less the
771 administrative charge described in subdivision (f) of this Article.

772 (e) If the Contractor is unable, fails or refuses to accept delivery of Project Water
773 made available by DWR in accordance with this Contract, such inability, failure or refusal shall not
774 relieve the Contractor of its obligation to pay DWR all associated costs.

775 (f) The Contractor shall pay DWR a monthly administrative charge specified in
776 Exhibit "C" of this Contract for each month in which DWR conveys Project Water to the Contractor
777 and for each month in which DWR invoices the Contractor for delinquent charges.

778 SALES, TRANSFERS, OR EXCHANGES OF WATER

779 9. (a) The right to receive Project Water provided for in this Contract may be sold,
780 transferred, or exchanged to others for reasonable and beneficial uses within the State of California if
781 such sale, transfer, or exchange is authorized by applicable Federal and State laws, and applicable
782 guidelines or regulations then in effect. No sale, transfer, or exchange of Project Water under this
783 Contract may take place without the prior written approval of the Contracting Officer, except as
784 provided for in subdivision (b) of this Article, and no such sales, transfers, or exchanges shall be
785 approved absent all appropriate environmental documentation including but not limited to documents
786 prepared pursuant to NEPA and ESA. Such environmental documentation should include, as
787 appropriate, an analysis of groundwater impacts and economic and social effects, including
788 environmental justice, of the proposed water transfers on both the transferor and transferee. No sale,
789 transfer or exchange of the right to Project Water under this Contract may take place without the prior
790 written approval of the Contracting Officer and of DWR, if State Facilities are used to convey such
791 water.

792 (b) In order to facilitate efficient water management by means of water transfers of
793 the type historically carried out among Project Contractors located within the same geographical area
794 and to allow the Contractor to participate in an accelerated water transfer program during the term of

795 this Contract, the Contracting Officer shall prepare, as appropriate, all necessary environmental
796 documentation including, but not limited to, documents prepared pursuant to NEPA and ESA
797 analyzing annual transfers within such geographical areas and the Contracting Officer shall determine
798 whether such transfers comply with applicable law. Following the completion of the environmental
799 documentation, such transfers addressed in such documentation shall be conducted with advance
800 notice to the Contracting Officer, but shall not require prior written approval by the Contracting
801 Officer. Such environmental documentation and the Contracting Officer's compliance determination
802 shall be reviewed every five years and updated, as necessary, prior to the expiration of the then-
803 existing five-year period. All subsequent environmental documentation shall include an alternative to
804 evaluate not less than the quantity of Project Water historically transferred within the same
805 geographical area.

806 (c) For a water transfer to qualify under subdivision (b) of this Article, such water
807 transfer must: (i) be for irrigation purposes for lands irrigated within the previous three years, for M&I
808 use, groundwater recharge, groundwater banking, similar groundwater activities, surface water storage,
809 or fish and wildlife resources; not lead to land conversion; and be delivered to established cropland,
810 wildlife refuges, groundwater basins or M&I; (ii) occur within a single Year; (iii) occur between a
811 willing seller and a willing buyer; (iv) convey water through existing facilities with no new
812 construction or modifications to facilities and be between existing Project Contractors and/or the
813 Contractor and the United States, Department of the Interior; and (v) comply with all applicable
814 Federal, State, and local or tribal laws and requirements imposed for protection of the environment and
815 Indian Trust Assets, as defined under Federal law.

816 APPLICATION OF PAYMENTS AND ADJUSTMENTS

817 10. (a) The amount of any overpayment by the Contractor of the Contractor's O&M,
818 capital, and deficit (if any) obligations for the Year shall be applied first to any current liabilities of the
819 Contractor arising out of this Contract then due and payable. Overpayments of more than \$1,000 shall
820 be refunded at the Contractor's request. In lieu of a refund, any amount of such overpayment at the
821 option of the Contractor may be credited against amounts to become due to the United States or DWR
822 by the Contractor. With respect to overpayment, such refund or adjustment shall constitute the sole
823 remedy of the Contractor or anyone having or claiming to have the right to the use of any of the Project
824 Water supply provided for herein. All credits and refunds of overpayments shall be made within 30
825 days of the Contracting Officer obtaining direction as to how to credit or refund such overpayment in
826 response to the notice to the Contractor that it has finalized the accounts for the Year in which the
827 overpayment was made.

828 (b) All advances for miscellaneous costs incurred for work requested by the
829 Contractor pursuant to Article 25 of this Contract shall be adjusted to reflect the actual costs when the
830 work has been completed. If the advances exceed the actual costs incurred, the difference will be
831 refunded to the Contractor. If the actual costs exceed the Contractor's advances, the Contractor will be
832 billed for the additional costs pursuant to Article 25.

833 (c) In the event that the Contractor contests the accuracy of any statement submitted
834 to it by DWR pursuant to this Contract it shall give DWR notice thereof at least ten days prior to the
835 day upon which payment of the stated amount is due. To the extent that DWR finds that the
836 Contractor's contentions regarding the statement are correct, it shall revise the statement accordingly,
837 and the Contractor shall make payment of the revised amounts on or before the due date. To the extent
838 that DWR does not find the Contractor's contentions to be correct, or where time is not available for

839 review of such contentions for correctness prior to due date, the Contractor shall make payment of the
840 stated amounts on or before the due date, but may make the contested part of such payment under
841 protest and seek an adjustment as described in subdivision (d) of this Article.

842 (d) If in any year, by reason of errors in computation or other causes, there is an
843 overpayment or underpayment to DWR by the Contractor of its charges provided for herein, the
844 amount of such overpayment or underpayment shall be credited or debited, as the case may be, to the
845 Contractor's account for the next succeeding Year and DWR shall notify the Contractor thereof in
846 writing.

847 TEMPORARY REDUCTIONS-RETURN FLOWS

848 11. (a) Subject to: (i) the authorized purposes and priorities of the Project and State
849 Facilities and the requirements of Federal law; (ii) the authorized purposes and priorities of the State
850 Facilities and State laws and policies governing the SWP; (iii) the obligations of the United States and
851 DWR under existing contracts, or renewals thereof, providing for water deliveries from the Project and
852 State Facilities; and (iv) the terms and conditions of this Contract; the Contracting Officer and DWR
853 shall make all reasonable efforts to optimize Project Water deliveries to the Contractor as provided in
854 this Contract.

855 (b) The Contracting Officer, DWR, or Operating Non-Federal Entity/Entities may
856 temporarily discontinue or reduce the quantity of Water Delivered to the Contractor as herein provided
857 for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the Project
858 or State Facilities or any part thereof necessary for the delivery of Project Water to the Contractor, but
859 so far as feasible the Contracting Officer, DWR, or Operating Non-Federal Entity/Entities will give the
860 Contractor due notice in advance of such temporary discontinuance or reduction, except in case of
861 emergency, in which case no notice need be given; Provided, That the United States and DWR shall

862 use its best efforts to avoid any discontinuance or reduction in such service. Upon resumption of
863 service after such reduction or discontinuance, and if requested by the Contractor, the United States
864 and DWR will, if possible, deliver the quantity of Project Water which would have been delivered
865 hereunder in the absence of such discontinuance or reduction.

866 (c) The United States reserves the right to all seepage and return flow water derived
867 from Water Delivered to the Contractor hereunder which escapes or is discharged beyond the
868 Contractor's Service Area; Provided, That this shall not be construed as claiming for the United States
869 any right to seepage or return flow being put to reasonable and beneficial use pursuant to this Contract
870 within the Contractor's Service Area by the Contractor or those claiming by, through, or under the
871 Contractor.

872 CONSTRAINTS ON THE AVAILABILITY OF WATER

873 12. (a) In its operation of the Project, the Contracting Officer will use all reasonable
874 means to guard against a Condition of Shortage in the quantity of water to be made available to the
875 Contractor pursuant to this Contract. In the event the Contracting Officer determines that a Condition
876 of Shortage appears probable, the Contracting Officer will notify the Contractor of said determination
877 as soon as practicable.

878 (b) If there is a Condition of Shortage because of errors in physical operations of the
879 Project, drought, other physical causes beyond the control of the Contracting Officer or actions taken
880 by the Contracting Officer to meet legal obligations then, except as provided in subdivision (a) of
881 Article 18 of this Contract, no liability shall accrue against the United States or any of its officers,
882 agents, or employees for any damage, direct or indirect, arising therefrom.

883 (c) In any Year in which there may occur a shortage for any of the reasons specified
884 in subdivision (b) of this Article, the Contracting Officer shall apportion the available Project Water

885 supply among the Contractors and others entitles, under existing contracts and future contracts (to the
886 extent such future contracts are permitted under subsections (a) and (b) of Section 3404 of the CVPIA)
887 and renewals thereof, to receive Project Water consistent with the contractual obligations of the
888 United States.

889 (d) DWR shall make all reasonable efforts consistent with sound fiscal policies, and
890 proper operating procedures to maintain the necessary facilities and to deliver Project Water to the
891 Contractor in accordance with the provisions of this Contract in such a manner and at such times as
892 such Project Water is scheduled by the Contractor; Provided, That such Project Water has been
893 furnished to DWR by the Contracting Officer; and, Provided, further, That in no event shall any
894 liability accrue against DWR or any of its officers, agents, or employees for damage, direct or indirect
895 for failure to deliver Project Water to the Contractor on account of errors in operation, drought, or any
896 other cause beyond the control of DWR. Inasmuch as DWR is providing only conveyance and storage
897 services under this Contract, it bears no responsibility for the availability of Project Water for such
898 conveyance.

899 (e) If any of the parties to this Contract are precluded in whole or in part from
900 delivering, conveying or receiving Project Water as a result of uncontrollable forces, all parties shall be
901 relieved from the obligation to the extent they are reasonably unable to complete the obligation due to
902 the uncontrollable force. Uncontrollable force shall include, but is not limited to, earthquakes, fires,
903 tornados, floods, and other natural disasters. Each party shall be responsible for payment of any costs
904 incurred on its behalf by the other party(ies) before the occurrence of the uncontrollable force.

905 UNAVOIDABLE GROUNDWATER PERCOLATION

906 13. To the extent applicable, the Contractor shall not be deemed to have delivered Irrigation
907 Water to Excess Lands or Ineligible Lands within the meaning of this Contract if such lands are

908 irrigated with groundwater that reaches the underground strata as an unavoidable result of the delivery
909 of Irrigation Water by the Contractor to Eligible Lands.

910 RULES AND REGULATIONS

911 14. The parties agree that the delivery of Irrigation Water or use of Federal facilities
912 pursuant to this Contract is subject to Federal Reclamation law, including but not limited to, the
913 Reclamation Reform Act of 1982 (43 U.S.C.390aa et seq.), as amended and supplemented, and the
914 rules and regulations promulgated by the Secretary of the Interior under Federal Reclamation law.

915 WATER AND AIR POLLUTION CONTROL

916 15. The Contractor, in carrying out this Contract, shall comply with all applicable water and
917 air pollution laws and regulations of the United States and the State of California, and shall obtain all
918 required permits or licenses from the appropriate Federal, State, or local authorities.

919 QUALITY OF WATER

920 16. (a) Project and State Facilities used to deliver Project Water to the Contractor
921 pursuant to this Contract shall be operated and maintained to enable the United States and DWR to
922 deliver Project Water to the Contractor in accordance with the water quality standards specified in
923 subsection 2(b) of the Act of August 26, 1937 (50 Stat. 850), as added by Section 101 of the Act of
924 October 27, 1986 (100 Stat. 3050) or other existing Federal laws. The United States and DWR are
925 under no obligation to construct or furnish water treatment facilities to maintain or to improve the
926 quality of Water Delivered to the Contractor pursuant to this Contract. The United States and DWR do
927 not warrant the quality of Water Delivered to the Contractor pursuant to this Contract.

928 (b) The Operation and Maintenance of Project facilities shall be performed in such
929 manner as is practicable to maintain the quality of raw water made available through such facilities at
930 the highest level reasonably attainable as determined by the Contracting Officer. The Contractor shall
931 be responsible for compliance with all State and Federal water quality standards applicable to surface
932 and subsurface agricultural drainage discharges generated through the use of Federal or Contractor
933 facilities or Project Water provided by the Contractor within the Contractor's Service Area.

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935

WATER ACQUIRED BY THE CONTRACTOR
OTHER THAN FROM THE UNITED STATES

936 17. (a) Water or water rights now owned or hereafter acquired by the Contractor other
937 than from the United States and Irrigation Water furnished pursuant to the terms of this Contract may
938 be simultaneously transported through the same distribution facilities of the Contractor subject to the
939 following: (i) if the facilities utilized for commingling Irrigation Water and non-Project water were
940 constructed without funds made available pursuant to Federal Reclamation law, the provisions of
941 Federal Reclamation law will be applicable only to the Landholders of lands which receive Irrigation
942 Water; (ii) the eligibility of land to receive Irrigation Water must be established through the
943 certification requirements as specified in the Acreage Limitation Rules and Regulations (43 CFR Part
944 426); (iii) the water requirements of Eligible Lands within the Contractor's Service Area can be
945 established and the quantity of Irrigation Water to be utilized is less than or equal to the quantity
946 necessary to irrigate such Eligible Lands; and (iv) if the facilities utilized for commingling Irrigation
947 Water and non-Project water are/were constructed with funds made available pursuant to Federal
948 Reclamation law, the non-Project water will be subject to the acreage limitation provisions of Federal
949 Reclamation law, unless the Contractor pays to the United States the incremental fee described in
950 43 CFR 426.15. In determining the incremental fee, the Contracting Officer will calculate annually the
951 cost to the Federal Government, including interest of storing or delivering non-Project water, which for
952 purposes of this Contract shall be determined as follows: The quotient shall be the unpaid distribution
953 system costs divided by the total irrigable acreage within the Contractor's Service Area. The
954 incremental fee per acre is the mathematical result of such quotient times the interest rate determined
955 using Section 202 (3) of the Act of October 12, 1982 (96 Stat. 1263). Such incremental fee will be
956 charged to each acre of excess or full cost land within the Contractor's Service Area that receives non-
957 Project water through Federally financed or constructed facilities. The incremental fee calculation

958 methodology will continue during the term of this Contract absent promulgation of a contrary
959 Reclamation-wide rule, regulation, or policy adopted after the Contractor has been afforded the
960 opportunity to review and comment on the proposed rule, regulation, or policy. If such rule,
961 regulation, or policy is adopted it shall supersede this provision. The Contractor and the Contracting
962 Officer concur that, as of the effective date of this Contract, the Contractor has a distribution system
963 that was constructed without the use of Federally financed funds. The use of this distribution system is
964 not subject to the provisions of this subdivision of this Article. A separate written agreement with
965 DWR must be obtained by the Contractor prior to conveyance of such water in State Facilities.

966 (b) Omitted.

967 OPINIONS AND DETERMINATIONS

968 18. (a) Where the terms of this Contract provide for actions to be based upon the
969 opinion or determination of any party to this Contract, said terms shall not be construed as permitting
970 such action to be predicated upon arbitrary, capricious, or unreasonable opinions or determinations.
971 The parties, notwithstanding any other provisions of this Contract, expressly reserve the right to seek
972 relief from and appropriate adjustment for any such arbitrary, capricious, or unreasonable opinion or
973 determination. Each opinion or determination by any party shall be provided in a timely manner.
974 Nothing in subdivision (a) of Article 18 of this Contract is intended to or shall affect or alter the
975 standard of judicial review applicable under Federal law to any opinion or determination implementing
976 a specific provision of Federal law embodied in statute or regulation.

977 (b) The Contracting Officer and DWR shall have the right to make determinations
978 necessary to administer this Contract that are consistent with the provisions of this Contract, the laws
979 of the United States and of the State of California, and the rules and regulations promulgated by the

980 Secretary of the Interior and DWR. Such determinations shall be made in consultation with the
981 Contractor to the extent reasonably practicable.

982 COORDINATION AND COOPERATION

983 19. (a) In order to further their mutual goals and objectives, the Contracting Officer and
984 the Contractor shall communicate, coordinate, and cooperate with each other, and with other affected
985 Project Contractors, in order to improve the operation and management of the Project. The
986 communication, coordination, and cooperation regarding operations and management shall include, but
987 not be limited to, any action which will or may materially affect the quantity or quality of Project
988 Water supply, the allocation of Project Water supply, and Project financial matters including, but not
989 limited to, budget issues. The communication, coordination, and cooperation provided for hereunder
990 shall extend to all provisions of this Contract. Each party shall retain exclusive decision making
991 authority for all actions, opinions, and determinations to be made by the respective party.

992 (b) Within 120 days following the effective date of this Contract, the Contractor,
993 other affected Project Contractors, and the Contracting Officer shall arrange to meet with interested
994 Project Contractors to develop a mutually agreeable, written Project-wide process, which may be
995 amended as necessary separate and apart from this Contract. The goal of this process shall be to
996 provide, to the extent practicable, the means of mutual communication and interaction regarding
997 significant decisions concerning Project operation and management on a real-time basis.

998 (c) In light of the factors referred to in subdivision (b) of Article 3 of this Contract,
999 it is the intent of the Secretary to improve water supply reliability. To carry out this intent:

1000 (1) The Contracting Officer will, at the request of the Contractor, assist in
1001 the development of integrated resource management plans for the Contractor. Further, the Contracting

1002 Officer will, as appropriate, seek authorizations for implementation of partnerships to improve water
1003 supply, water quality, and reliability.

1004 (2) The Secretary will, as appropriate, pursue program and project
1005 implementation and authorization in coordination with Project Contractors to improve the water
1006 supply, water quality, and reliability of the Project for all Project purposes.

1007 (3) The Secretary will coordinate with Project Contractors and the State of
1008 California to seek improved water resource management.

1009 (4) The Secretary will coordinate actions of agencies within the Department
1010 of the Interior that may impact the availability of water for Project purposes.

1011 (5) The Contracting Officer shall periodically, but not less than annually,
1012 hold division level meetings to discuss Project operations, division level water management activities,
1013 and other issues as appropriate.

1014 (d) Without limiting the contractual obligations of the Contracting Officer under the
1015 other Articles of this Contract, nothing in this Article shall be construed to limit or constrain the
1016 Contracting Officer's ability to communicate, coordinate, and cooperate with the Contractor or other
1017 interested stakeholders or to make decisions in a timely fashion as needed to protect health, safety, or
1018 the physical integrity of structures or facilities.

1019 CHARGES FOR DELINQUENT PAYMENTS

1020 20. (a) The Contractor shall be subject to interest, administrative and penalty charges on
1021 delinquent installments or payments. When a payment is not received by the due date, the Contractor
1022 shall pay an interest charge for each day the payment is delinquent beyond the due date. When a
1023 payment becomes sixty (60) days delinquent, the Contractor shall pay an administrative charge to
1024 cover additional costs of billing and processing the delinquent payment. When a payment is
1025 delinquent ninety (90) days or more, the Contractor shall pay an additional penalty charge of six (6%)
1026 percent per year for each day the payment is delinquent beyond the due date. Further, the Contractor
1027 shall pay any fees incurred for debt collection services associated with a delinquent payment.

1028 (b) The interest charge rate shall be the greater of the rate prescribed quarterly in the
1029 Federal Register by the Department of the Treasury for application to overdue payments, or the interest
1030 rate of one-half of one (0.5%) percent per month prescribed by Section 6 of the Reclamation Project
1031 Act of 1939 (Public Law 76-260). The interest charge rate shall be determined as of the due date and
1032 remain fixed for the duration of the delinquent period.

1033 (c) When a partial payment on a delinquent account is received, the amount
1034 received shall be applied, first to the penalty, second to the administrative charges, third to the accrued
1035 interest, and finally to the overdue payment.

1036 EQUAL OPPORTUNITY

1037 21. During the performance of this Contract, the Contractor agrees as follows:

1038 (a) The Contractor will not discriminate against any employee or applicant for
1039 employment because of race, color, religion, sex, or national origin. The Contractor will take
1040 affirmative action to ensure that applicants are employed, and that employees are treated during
1041 employment, without regard to their race, color, religion, sex, or national origin. Such action shall
1042 include, but not be limited to, the following: Employment, upgrading, demotion, or transfer;
1043 recruitment or recruitment advertising; layoff or termination, rates of payment or other forms of
1044 compensation; and selection for training, including apprenticeship. The Contractor agrees to post in
1045 conspicuous places, available to employees and applicants for employment, notices to be provided by
1046 the Contracting Officer setting forth the provisions of this nondiscrimination clause.

1047 (b) The Contractor will, in all solicitations or advertisements for employees placed
1048 by or on behalf of the Contractor, state that all qualified applicants will receive consideration for
1049 employment without discrimination because of race, color, religion, sex, or national origin.

1050 (c) The Contractor will send to each labor union or representative of workers with
1051 which it has a collective bargaining agreement or other contract or understanding, a notice, to be
1052 provided by the Contracting Officer, advising the said labor union or workers' representative of the
1053 Contractor's commitments under Section 202 of Executive Order 11246 of September 24, 1965, and
1054 shall post copies of the notice in conspicuous places available to employees and applicants for
1055 employment.

1056 (d) The Contractor will comply with all provisions of Executive Order
1057 No. 11246 of September 24, 1965, as amended, and of the rules, regulations, and relevant orders of the
1058 Secretary of Labor.

1059 (e) The Contractor will furnish all information and reports required by said
1060 amended Executive Order and by the rules, regulations, and orders of the Secretary of Labor, or
1061 pursuant thereto, and will permit access to its books, records, and accounts by the Contracting Officer
1062 and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules,
1063 regulations, and orders.

1064 (f) In the event of the Contractor's noncompliance with the nondiscrimination
1065 clauses of this Contract or with any of the said rules, regulations, or orders, this Contract may be
1066 canceled, terminated, or suspended, in whole or in part, and the Contractor may be declared ineligible
1067 for further Government contracts in accordance with procedures authorized in said amended Executive
1068 Order, and such other sanctions may be imposed and remedies invoked as provided in said Executive
1069 Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

1070 (g) The Contractor will include the provisions of paragraphs (a) through (g) in every
1071 subcontract or purchase order unless exempted by the rules, regulations, or orders of the Secretary of
1072 Labor issued pursuant to Section 204 of said amended Executive Order, so that such provisions will be
1073 binding upon each subcontractor or vendor. The Contractor will take such action with respect to any
1074 subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing
1075 such provisions, including sanctions for noncompliance: Provided, however, That in the event the
1076 Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a
1077 result of such direction, the Contractor may request the United States to enter into such litigation to
1078 protect the interests of the United States.

1079 GENERAL OBLIGATION--BENEFITS CONDITIONED UPON PAYMENT

1080 22. (a) The obligation of the Contractor to pay the United States and DWR as provided
1081 in this Contract is a general obligation of the Contractor notwithstanding the manner in which the
1082 obligation may be distributed among the Contractor's water users and notwithstanding the default of
1083 individual water users in their obligations to the Contractor.

1084 (b) The payment of charges becoming due hereunder is a condition precedent to
1085 receiving benefits under this Contract. The United States and DWR shall not make water available or
1086 conveyance facilities to the Contractor through Project or State Facilities during any period in which
1087 the Contractor may be in arrears in the advance payment of water rates due the United States. The
1088 Contractor shall not furnish water made available pursuant to this Contract for lands or parties which
1089 are in arrears in the advance payment of water rates levied or established by the Contractor.

1090 (c) With respect to subdivision (b) of this Article, the Contractor shall have no
1091 obligation to require advance payment for water rates which it levies. Subdivision (b) of this Article
1092 applies to periods when the Contractor is in arrears on payment of charges to DWR.

1093 (d) If in any year the Contractor fails or is unable to raise sufficient funds by other
1094 means, the governing body of the Contractor shall levy upon all property within the Contractor's

1095 boundary not exempt from taxation, a special assessment sufficient to provide for all payments due the
1096 United States and DWR under this Contract.

1097 (e) Assessments levied by the governing body of the Contractor pursuant to
1098 subdivision (b) of this Article shall be enforced and collected by all officers of the Contractor charged
1099 with the duty of enforcing and collecting assessments levied by the Contractor.

1100 (f) All money collected by way of special assessments under this Article for
1101 payments due DWR shall be kept in a separate fund by the treasurer or other officer of the Contractor
1102 charged with the safekeeping and disbursement of funds of the Contractor, and, upon the written
1103 demand of DWR, the treasurer or other officer shall pay over to DWR all money in his possession or
1104 control then due DWR under this Contract, which money shall be applied by DWR to the satisfaction
1105 of the amount due under this Contract.

1106 (g) In the event of failure, neglect, or refusal of any officer of the Contractor to levy
1107 any assessment necessary to provide payment by the Contractor under this Contract, to enforce or to
1108 collect the assessment, or to pay over to the United States or DWR any money then due collected on
1109 the assessment, either or both DWR and the United States may take such action in a court of competent
1110 jurisdiction as they deem necessary to compel the performance in their proper sequence of all such
1111 duties. Action taken pursuant hereto shall not deprive DWR or United States or limit any remedy
1112 provided by this Contract or by law for the recovery of money due or which may become due under
1113 this Contract.

1114 COMPLIANCE WITH CIVIL RIGHTS LAWS AND REGULATIONS

1115 23. (a) The Contractor shall comply with Title VI of the Civil Rights Act of 1964
1116 (42 U.S.C. 2000d), Section 504 of the Rehabilitation Act of 1975 (P.L. 93-112, as amended), the Age
1117 Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) and any other applicable civil rights laws, as well
1118 as with their respective implementing regulations and guidelines imposed by the U.S. Department of
1119 the Interior and/or Bureau of Reclamation.

1120 (b) These statutes require that no person in the United States shall, on the grounds
 1121 of race, color, national origin, handicap, or age, be excluded from participation in, be denied the
 1122 benefits of, or be otherwise subjected to discrimination under any program or activity receiving
 1123 financial assistance from the Bureau of Reclamation. By executing this Contract, the Contractor
 1124 agrees to immediately take any measures necessary to implement this obligation, including permitting
 1125 officials of the United States to inspect premises, programs, and documents.

1126 (c) The Contractor makes this agreement in consideration of and for the purpose of
 1127 obtaining any and all Federal grants, loans, contracts, property discounts, or other Federal financial
 1128 assistance extended after the date hereof to the Contractor by the Bureau of Reclamation, including
 1129 installment payments after such date on account of arrangements for Federal financial assistance which
 1130 were approved before such date. The Contractor recognizes and agrees that such Federal assistance
 1131 will be extended in reliance on the representations and agreements made in this Article, and that the
 1132 United States reserves the right to seek judicial enforcement thereof.

1133 PRIVACY ACT COMPLIANCE

1134 24. (a) The Contractor shall comply with the Privacy Act of 1974 (5 U.S.C. 552a)
 1135 (the Act) and the Department of the Interior rules and regulations under the Act (43 CFR 2.45 et seq.)
 1136 in maintaining Landholder acreage certification and reporting records, required to be submitted to the
 1137 Contractor for compliance with Sections 206 and 228 of the Reclamation Reform Act of 1982 (96 Stat.
 1138 1266), and pursuant to 43 CFR 426.18.

1139 (b) With respect to the application and administration of the criminal penalty
 1140 provisions of the Act (5 U.S.C. 552a(i)), the Contractor and the Contractor's employees responsible for
 1141 maintaining the certification and reporting records referenced in (a) above are considered to be
 1142 employees of the Department of the Interior. See 5 U.S.C. 552a (m).

1143 (c) The Contracting Officer or a designated representative shall provide the
 1144 Contractor with current copies of the Interior Department Privacy Act regulations and the Bureau of
 1145 Reclamation Federal Register Privacy Act System of Records Notice (Acreage Limitation--Interior,
 1146 Reclamation-31) which govern the maintenance, safeguarding, and disclosure of information contained
 1147 in the Landholder's certification and reporting records.

1148 (d) The Contracting Officer shall designate a full-time employee of the Bureau of
 1149 Reclamation to be the System Manager who shall be responsible for making decisions on denials
 1150 pursuant to 43 CFR 2.61 and 2.64 amendment requests pursuant to 43 CFR 2.72. The Contractor is
 1151 authorized to grant requests by individuals for access to their own records.

1152 (e) The Contractor shall forward promptly to the System Manager each proposed
 1153 denial of access under 43 CFR 2.64; and each request for amendment of records filed under 43 CFR
 1154 2.71; notify the requester accordingly of such referral; and provide the System Manager with
 1155 information and records necessary to prepare an appropriate response to the requester. These
 1156 requirements do not apply to individuals seeking access to their own certification and reporting forms
 1157 filed with the Contractor pursuant to 43 CFR 426.18, unless the requester elects to cite the Privacy Act
 1158 as a basis for the request.

1159 CONTRACTOR TO PAY CERTAIN MISCELLANEOUS COSTS

1160 25. In addition to all other payments to be made by the Contractor pursuant to this Contract,
1161 the Contractor shall pay to the United States, within 60 days after receipt of a bill and detailed
1162 statement submitted by the Contracting Officer to the Contractor for such specific items of direct cost
1163 incurred by the United States for work requested by the Contractor associated with this Contract plus
1164 indirect costs in accordance with applicable Bureau of Reclamation policies and procedures. All such
1165 amounts referred to in this Article shall not exceed the amount agreed to in writing in advance by the
1166 Contractor. This Article shall not apply to costs for routine contract administration.

1167 WATER CONSERVATION

1168 26. (a) Prior to the delivery of water provided from or conveyed through Federally
1169 constructed or Federally financed facilities pursuant to this Contract, the Contractor shall be
1170 implementing an effective water conservation and efficiency program based on the Contractor's water
1171 conservation plan that has been determined by the Contracting Officer to meet the conservation and
1172 efficiency criteria for evaluating water conservation plans established under Federal law. The water
1173 conservation and efficiency program shall contain definite water conservation objectives, appropriate
1174 economically feasible water conservation measures, and time schedules for meeting those objectives.
1175 Continued Project Water delivery pursuant to this Contract shall be contingent upon the Contractor's
1176 continued implementation of such water conservation program. In the event the Contractor's water
1177 conservation plan or any revised water conservation plan completed pursuant to subdivision (d) of
1178 Article 26 of this Contract have not yet been determined by the Contracting Officer to meet such
1179 criteria, due to circumstances which the Contracting Officer determines are beyond the control of the
1180 Contractor, water deliveries shall be made under this Contract so long as the Contractor diligently
1181 works with the Contracting Officer to obtain such determination at the earliest practicable date, and

1182 thereafter the Contractor immediately begins implementing its water conservation and efficiency
1183 program in accordance with the time schedules therein.

1184 (b) Should the amount of M&I Water delivered pursuant to subdivision (a) of
1185 Article 3 of this Contract equal or exceed 2,000 acre-feet per Year, the Contractor shall implement the
1186 Best Management Practices identified by the time frames issued by the California Urban Water
1187 Conservation Council for such M&I Water unless any such practice is determined by the Contracting
1188 Officer to be inappropriate for the Contractor.

1189 (c) The Contractor shall submit to the Contracting Officer a report on the status of
1190 its implementation of the water conservation plan on the reporting dates specified in the then existing
1191 conservation and efficiency criteria established under Federal law.

1192 (d) At five-year intervals, the Contractor shall revise its water conservation plan to
1193 reflect the then-current conservation and efficiency criteria for evaluating water conservation plans
1194 established under Federal law and submit such revised water management plan to the Contracting
1195 Officer for review and evaluation. The Contracting Officer will then determine if the water
1196 conservation plan meets Reclamation's then-current conservation and efficiency criteria for evaluating
1197 water conservation plans established under Federal law.

1198 (e) If the Contractor is engaged in direct groundwater recharge, such activity shall
1199 be described in the Contractor's water conservation plan.

1200 EXISTING OR ACQUIRED WATER OR WATER RIGHTS

1201 27. Except as specifically provided in Article 17 of this Contract, the provisions of this
1202 Contract shall not be applicable to or affect non-Project water or water rights now owned or hereafter
1203 acquired by the Contractor or any user of such water within the Contractor's Service Area. Any such
1204 water shall not be considered Project Water under this Contract. In addition, this Contract shall not be

1205 construed as limiting or curtailing any rights which the Contractor or any water user within the
1206 Contractor's Service Area acquires or has available under any other contract pursuant to Federal
1207 Reclamation law.

1208 OPERATION AND MAINTENANCE BY OPERATING NON-FEDERAL ENTITY

1209 28. (a) The O&M of a portion of the Project facilities which serve the Contractor, and
1210 responsibility for funding a portion of the costs of such O&M, have been transferred to two Operating
1211 Non-Federal Entities by separate agreements between the United States and the Operating Non-Federal
1212 Entities. Those separate agreements shall not interfere with or affect the rights or obligations of the
1213 Contractor or the United States hereunder. Specifically, portions of the Delta-Mendota Canal, the San
1214 Luis Canal and other related facilities are operated by the San Luis & Delta-Mendota Water Authority
1215 and the Friant-Kern Canal and related facilities are operated by the Friant Water Authority.

1216 (b) The Contractor shall pay directly to the applicable Operating Non-Federal
1217 Entity, or to any successor approved by the Contracting Officer under the terms and conditions of the
1218 separate agreements between the United States and the Operating Non-Federal Entities described in
1219 subdivision (a) of this Article, all rates, charges, or assessments of any kind, including any assessment
1220 for reserve funds, which the Operating Non-Federal Entity or such successor determines, sets, or
1221 establishes for the O&M of the portion of the Project facilities operated and maintained by the
1222 Operating Non-Federal Entity or such successor. Such direct payments to the Operating Non-Federal
1223 Entity or such successor shall not relieve the Contractor of its obligation to pay directly to the
1224 United States the Contractor's share of the Project Rates, Charges, and Tiered Pricing Component(s)
1225 except to the extent the Operating Non-Federal Entity collects payments on behalf of the United States
1226 in accordance with the separate agreement identified in subdivision (a) of this Article.

1227 (c) For so long as the O&M of any portion of the Project facilities serving the
1228 Contractor is performed by the Operating Non-Federal Entities, or any successors thereto, the
1229 Contracting Officer shall adjust those components of the Rates for Water Delivered under this Contract
1230 representing the cost associated with the activity being performed by the Operating
1231 Non-Federal Entities or their successors.

1232 (d) In the event the O&M of the Project facilities operated and maintained by the
1233 Operating Non-Federal Entity/Entities is re-assumed by the United States during the term of this
1234 Contract, the Contracting Officer shall so notify the Contractor, in writing, and present to the
1235 Contractor a revised Exhibit "B" which shall include the portion of the Rates to be paid by the
1236 Contractor for Project Water under this Contract representing the O&M costs of the portion of such
1237 Project facilities which have been re-assumed. The Contractor shall, thereafter, in the absence of
1238 written notification from the Contracting Officer to the contrary, pay the Rates, Charges, and Tiered
1239 Pricing Component specified in the revised Exhibit "B" directly to the United States in compliance
1240 with Article 7 of this Contract.

1241 CONTINGENT ON APPROPRIATION OR ALLOTMENT OF FUNDS

1242 29. The expenditure or advance of any money or the performance of any obligation of the
1243 United States under this Contract shall be contingent upon appropriation or allotment of funds.
1244 Absence of appropriation or allotment of funds shall not relieve the Contractor from any obligations
1245 under this Contract. No liability shall accrue to the United States in case funds are not appropriated or
1246 allotted.

1247 BOOKS, RECORDS, AND REPORTS

1248 30. (a) The Contractor shall establish and maintain accounts and other books and
1249 records pertaining to administration of the terms and conditions of this Contract, including: the
1250 Contractor's financial transactions, water supply data, and Project land and right-of-way agreements;
1251 the water users' land-use (crop census), land ownership, land-leasing and water use data; and other
1252 matters that the Contracting Officer may require. Reports thereon shall be furnished to the Contracting
1253 Officer in such form and on such date or dates as the Contracting Officer may require. Subject to
1254 applicable Federal laws and regulations, each party to this Contract shall have the right during office

1255 hours to examine and make copies of the other party's books and records relating to matters covered by
1256 this Contract.

1257 (b) Notwithstanding the provisions of subdivision (a) of this Article, no books,
1258 records, or other information shall be requested from the Contractor by the Contracting Officer unless
1259 such books, records, or information are reasonably related to the administration or performance of this
1260 Contract. Any such request shall allow the Contractor a reasonable period of time within which to
1261 provide the requested books, records, or information.

1262 (c) At such time as the Contractor provides information to the Contracting Officer
1263 pursuant to subdivision (a) of this Article, a copy of such information shall be provided to the
1264 Operating Non-Federal Entity/Entities.

1265 ASSIGNMENT LIMITED--SUCCESSORS AND ASSIGNS OBLIGATED

1266 31. (a) The provisions of this Contract shall apply to and bind the successors and
1267 assigns of the parties hereto, but no assignment or transfer of this Contract or any right or interest
1268 therein shall be valid until approved in writing by the Contracting Officer.

1269 (b) The assignment of any right or interest in this Contract by a party shall not
1270 interfere with the rights or obligations of the other parties to this Contract absent the written
1271 concurrence of said other parties.

1272 (c) The Contracting Officer shall not unreasonably condition or withhold approval
1273 of any proposed assignment.

1274 (d) No assignment or transfer of any rights to use State Facilities authorized by this
1275 Contract shall be valid without advance written approval by DWR.

1276 SEVERABILITY

1277 32. In the event that a person or entity who is neither (i) a party to a Project contract, nor
1278 (ii) a person or entity that receives Project Water from a party to a Project contract, nor (iii) an
1279 association or other form of organization whose primary function is to represent parties to Project

1280 contracts, brings an action in a court of competent jurisdiction challenging the legality or enforceability
1281 of a provision included in this Contract and said person, entity, association, or organization obtains a
1282 final court decision holding that such provision is legally invalid or unenforceable and the Contractor
1283 has not intervened in that lawsuit in support of the plaintiff(s), the parties to this Contract shall use
1284 their best efforts to (i) within 30 days of the date of such final court decision identify by mutual
1285 agreement the provisions in this Contract which must be revised and (ii) within three months thereafter
1286 promptly agree on the appropriate revision(s). The time periods specified above may be extended by
1287 mutual agreement of the parties. Pending the completion of the actions designated above, to the extent
1288 it can do so without violating any applicable provisions of law, the United States shall continue to
1289 make the quantities of Project Water specified in this Contract available to the Contractor pursuant to
1290 the provisions of this Contract which were not found to be legally invalid or unenforceable in the final
1291 court decision.

1292 RESOLUTION OF DISPUTES

1293 33. Should any dispute arise concerning any provisions of this Contract, or the parties'
1294 rights and obligations thereunder, the parties shall meet and confer in an attempt to resolve the dispute.
1295 Prior to the Contractor commencing any legal action, or the Contracting Officer referring any matter
1296 to Department of Justice, the party shall provide to the other party 30 days' written notice of the intent
1297 to take such action; Provided, That such notice shall not be required where a delay in commencing an
1298 action would prejudice the interests of the party that intends to file suit. During the 30-day notice
1299 period, the Contractor and the Contracting Officer shall meet and confer in an attempt to resolve the
1300 dispute. Except as specifically provided, nothing herein is intended to waive or abridge any right or
1301 remedy that the Contractor or the United States may have.

1302

OFFICIALS NOT TO BENEFIT

1303 34. No Member of or Delegate to Congress, Resident Commissioner, or official of the
1304 Contractor shall benefit from this Contract other than as a water user or landowner in the same manner
1305 as other water users or landowners.

1306

CHANGES IN CONTRACTOR'S SERVICE AREA

1307 35. (a) While this Contract is in effect, no change may be made in the Contractor's
1308 Service Area, by inclusion or exclusion of lands, dissolution, consolidation, merger, or otherwise,
1309 except upon the Contracting Officer's written consent.

1310 (b) Within 30 days of receipt of a request for such a change, the Contracting Officer
1311 will notify the Contractor of any additional information required by the Contracting Officer for
1312 processing said request, and both parties will meet to establish a mutually agreeable schedule for
1313 timely completion of the process. Such process will analyze whether the proposed change is likely to:
1314 (i) result in the use of Project Water contrary to the terms of this Contract; (ii) impair the ability of the
1315 Contractor to pay for Project Water furnished under this Contract or to pay for any Federally-
1316 constructed facilities for which the Contractor is responsible; and (iii) have an impact on any Project
1317 Water rights applications, permits, or licenses. In addition, the Contracting Officer shall comply with
1318 NEPA and ESA. The Contractor will be responsible for all costs incurred by the Contracting Officer
1319 in this process, and such costs will be paid in accordance with Article 25 of this Contract. Upon
1320 approval by the Contracting Officer, the Contractor shall promptly give notice of any such change in
1321 Contractor's Service Area to DWR.

1322

FEDERAL LAWS

1323 36. By entering into this Contract, the Contractor does not waive its rights to contest the
1324 validity or application in connection with the performance of the terms and conditions of this Contract
1325 of any Federal law or regulation; Provided, That the Contractor agrees to comply with the terms and

1326 conditions of this Contract unless and until relief from application of such Federal law or regulation to
1327 the implementing provision of the Contract is granted by a court of competent jurisdiction.

1328 NOTICES

1329 37. Any notice, demand, or request authorized or required by this Contract shall be deemed
1330 to have been given on behalf of the parties when mailed, postage prepaid; or delivered to the Area
1331 Manager, South-Central California Area Office, 1243 "N" Street, Fresno, California 93721-1813; to
1332 the Chief, State Water Project Analysis Office, Department of Water Resources, P.O. Box 942836,
1333 Sacramento, California 94236-0001; and to the Board of Directors of the Tri-Valley Water District,
1334 15142 East Goodfellow Avenue, Sanger, California 93657. The designation of the addressee or the
1335 address may be changed by notice given in the same manner as provided in this Article for other
1336 notices.

1337 CONFIRMATION OF CONTRACT

1338 38. The Contractor, after the execution of this Contract, shall promptly seek to secure a
1339 decree of a court of competent jurisdiction of the State of California, confirming the execution of this
1340 Contract. The Contractor shall furnish both the United States and DWR with a certified copy of the
1341 final decree, the validation proceedings, and all pertinent supporting records of the court approving and
1342 confirming this Contract, and decreeing and adjudging it to be lawful, valid, and binding on the
1343 Contractor.

1344 IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the day and
1345 year first above written.

1346
1347 THE UNITED STATES OF AMERICA

1348 By: _____
1349 Regional Director, Mid-Pacific Region
1350 Bureau of Reclamation

1351 Approved as to Legal Form and DEPARTMENT OF WATER RESOURCES
1352 Sufficiency: OF THE STATE OF CALIFORNIA

1353 By: _____ By: _____
1354 Chief Counsel, Director,
1355 Department of Water Resources Department of Water Resources

1356 (SEAL) TRI-VALLEY WATER DISTRICT

1357 By: _____
1358 President of the Board of Directors

1359 Attest:

1360 By: _____
1361 Secretary of the Board of Directors

1362 (H:\pub 440\LTRC\Final Draft LTRC's – Fresno, Tracy\10-20-04 TriValley WD Finall Draft LTRC
1363 with exhibits.doc)

EXHIBIT A

[Map or Description of Service Area]

EXHIBIT B

TRI VALLEY WATER DISTRICT
Water Rates and Charges

Note: Rates and Charges are 2004 rates. This exhibit will be updated prior to execution of the contract to reflect the current Rates and Charges.

	<u>2004 Rates Per Acre-Foot</u>	
	<u>Banks Joint Point Pumping</u>	
	<u>Irrigation Water</u>	<u>M&I Water</u>
O&M AND COST-OF-SERVICE RATES:		
Capital Rates:		
Cross Valley Conveyance (if applicable)	\$5.35	**
O&M Rates:		
Water Marketing	\$7.59	
Storage	\$5.83	
Direct Pumping (Project Use Energy)	\$3.25	
Dos Amigos	4/	
Deficit Rates:		
Non-Interest Bearing		
Interest Bearing	\$0.28	
TOTAL COST-OF-SERVICE RATES:	\$22.30	
FULL-COST RATES:		
Section 202(3) Rate is applicable to a Qualified recipient or to a Limited Recipient receiving irrigation water on or before October 1, 1981.	\$28.31	
Section 205(a)(3) Rate is applicable to a Limited Recipient that did not receive irrigation water on or before October 1, 1981.	\$29.83	
SURCHARGES UNDER P.L 102-575 TO RESTORATION FUND*		
Restoration Payments [3407(d)(2)(A)]	\$7.82	

* The surcharges are payments in addition to the water rates and were determined pursuant to Title XXXIV of Public Law 102-575. Restoration fund surcharges under P.L. 102-575 are on a fiscal year basis (10/1/01-9/30/02).

** M&I Rates will be calculated when needed.

4/ - Conveyance and Conveyance Pumping operation and maintenance costs were removed for ratesetting purposes and are to be direct billed.

